

DOCUMENT RESUME

03176 - [A2233365]

[Fly America Act--Travel by Foreign Air Carrier]. B-188968.
August 8, 1977. 3 pp.

Decision re: Catherine Benton; by Robert F. Keller, Deputy
Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation
(305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel
Management (805).

Organization Concerned: ACTION: Peace Corps.

Authority: International Air Transportation Fair Competitive
Practices Act of 1974 (P.L. 93-623; 88 Stat. 2104; 49 U.S.C.
1517 (Supp. V)). Federal Aviation Act of 1958, sec. 401 (49
U.S.C. 1371). B-138942 (1976). B-185007 (1976). 41 Fed. Reg.
14946.

Michael H. Barkow, Associate General Counsel for
ACTION, requested a decision as to whether a Peace Corps
volunteer was liable for the cost of transportation by foreign
air carrier, even though she was apparently not counseled
regarding the requirement for use of available certificated U.S.
air carrier service. The traveler was responsible for the cost
of the transportation because the use of a certified U.S. air
carrier in the circumstances was required by statute. Travelers
are charged with knowledge of this statutory requirement, which
may not be waived. (Author/SC)

Final
Civ. Serv.

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-188968

DATE: August 8, 1977

MATTER OF: Catherine Benton - Fly America Act - travel by
foreign air carrier

DIGEST: Peace Corps Volunteer who apparently was not
counseled regarding the requirements of 49 U.S.C.
§ 1517, flew from Delhi, India, to New York by
foreign air carrier when transportation by certified
U.S. air carrier was available. Traveler is
liable for the cost of this transportation. Use
of certified U.S. air carrier in these circumstances
is required by statute. Travelers are charged with
knowledge of this statutory requirement, which may
not be waived.

By letter dated April 12, 1977, Mr. Michael H. Barkow, As-
sociate General Counsel, ACTION Agency, requested our decision as
to whether Ms. Catherine Benton, a Peace Corps volunteer, is liable
for the cost of transportation by foreign air carrier from Delhi,
India, to New York, in violation of 49 U.S.C. § 1517 (Supp. V, 1975),
even though she may have been unaware of the requirement for use
of available certificated U.S. air carrier service imposed by this
law.

Ms. Benton was assigned to a United Nations project in India.
When she completed her volunteer service there in October 1976
the Peace Corps had phased out its operations in India and there
was no official of that organization available to advise her con-
cerning her transportation home. The Peace Corps arranged for
UNICEF to purchase a ticket for her, which routed her from Delhi,
India, to New York via Pan American Airways, and to bill the Peace
Corps for the cost, \$1,115. Ms. Benton elected instead to travel
by Swiss Air. She states that she selected this airline because
she preferred its service and the cost was the same, and further
that she was not informed of any requirement that she use American
carriers.

The requirement for use of certificated U.S. air carriers in
international travel is imposed by section 5 of the International
Air Transportation Fair Competitive Practices Act of 1974, Public
Law 93-623, January 3, 1975, 88 Stat. (Part 2) 2104, 49 U.S.C.
§ 1517 (Supp. V, 1975), which provides in pertinent part as follows:

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"* * * The Comptroller General of the United States shall disallow any expenditure from appropriated funds for payment of such personnel or cargo transportation on an air carrier not holding a certificate under section 401 of this Act in the absence of satisfactory proof of the necessity therefore. * * *"

The Guidelines for implementation of that provision, issued by the Comptroller General on March 12, 1976, B-138942, and published on April 8, 1976, in volume 41 of the Federal Register at page 14946, provide in pertinent part as follows:

"1. Certificated air carriers (those holding certificates under section 401 of the Federal Aviation Act of 1958, 49 U.S.C. § 1371 (1970)) must be used for all Government-financed commercial foreign air transportation of persons or property if service provided by those carriers is 'available.'

"2. Generally, passenger or freight service by a certificated air carrier is 'available' if the carrier can perform the commercial foreign air transportation needed by the agency and if the service will accomplish the agency's mission. Expenditures for service furnished by a noncertificated air carrier generally will be allowed only when service by a certificated air carrier or carriers was 'unavailable.'

"3. Passenger or freight service by a certificated air carrier is considered 'available' even though:

* * * * *

"(c) service by a noncertificated air carrier is preferred by the agency or traveler needing air transportation * * *."

Because the requirement for use of certificated service is imposed directly by statute all persons are charged with knowledge of it. Its application is mandatory and may not be waived. Matter of Arnold J. Jacobius, B-186007, November 15, 1976. Therefore, since transportation by certified U.S. air carrier was available between

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Delhi and New York, appropriated funds may not be used to pay the cost of Ms. Benton's transportation by foreign air carrier, regardless of whether she had in fact been counseled regarding the requirements of the statute.


Deputy Comptroller General
of the United States