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

FILE: B-206723 **DATE:** October 21, 1982

MATTER OF: General William Coleman, USAF, et al.

DIGEST:

1. Employees whose international travel was routed by a transportation official of the agency on non-certificated carriers in violation of the Fly America Act are liable for the expenses incurred by such travel, even though agency regulations require transportation officers to make travel arrangements. Transportation expenses incurred in violation of the Fly America Act may not be paid from appropriated funds and transportation officers acting in their official capacity are not subject to the imposition of liability for errors of judgment.

2. In the absence of a substantiated declaration by an appropriate agency official that certificated carrier service is unavailable, an agency's standard procedure of scheduling travel by non-certificated carriers only when certificated carrier service is unavailable, as required by the regulations, is not a sufficient basis to support a determination that the Fly America Act was not violated in a particular case.

This action responds to the request of Mr. J. D. Graham, Accounting and Finance Officer for the Defense Property Disposal Service, Defense Logistics Agency, for a decision concerning the liability of several employees and military officers under the Fly America Act for the cost of portions of international travel they performed by non-certificated carriers. The request was assigned Control Number 82-7 by the Per Diem, Travel and Transportation Allowance Committee.

The employees are not entitled to reimbursement since it is the traveler's responsibility to comply with the Fly America Act, even though travel arrangements are prepared by agency transportation officers. Certification of the unavailability of certificated carrier service may be issued only by appropriate agency officials in accordance with regulatory provisions.

During an audit of the Defense Property Disposal Service by this Office potential violations of the Fly America Act were discovered. As a result, a case was submitted here for a decision of

the Comptroller General concerning the use of appropriated funds for the travel. In that case it was decided that the employee was liable for the cost of the travel on a foreign-flag airline. Matter of Young, B-192522, January 30, 1979. The decision was affirmed after reconsideration, Matter of Young, B-192522, April 22, 1981.

As a result of a review, the disbursing officer for the agency has attempted collection of the costs of travel from seven other individuals of the agency who traveled in similar circumstances. Since various arguments have been raised against the collection actions, the disbursing officer has submitted the case for decision to the Comptroller General. The individuals involved are: General William Coleman, USAF, retired; Colonel Robert A. Hamlin, USAF; Mr. Roger C. Lance; Mr. Roger J. Simboli; Mr. Richard B. Urban; Mr. John B. Clemmons; and Mr. James V. Mobley.

The individuals traveled in accordance with the itineraries and Government Travel Requests prepared for them by a transportation officer of the agency who routed portions of their travel on foreign-flag carriers. Although flights by certificated carriers apparently were available at all times when the subject travel was performed, the transportation officer provided no explanation of the necessity to use foreign carriers or declaration of the unavailability of flights by certificated carriers. Information which might establish the necessity of using foreign carrier service is no longer available since the travel was performed in 1976 and 1978, and the transportation officer who scheduled the travel is no longer employed by the agency.

A memorandum from the Washington, Headquarters Services, Department of Defense, to the Executive, Per Diem, Travel and Transportation Allowance Committee, raises two issues regarding this situation. On one hand, a question arises as to whether these individuals should be held personally liable for the expense of their travel by non-certificated carriers since the travel was scheduled by the transportation officer, who under agency regulations is responsible for determining and obtaining necessary and proper travel arrangements for employees of the agency. In this regard, the view is expressed that individuals traveling on official business should not be held liable in such cases since they:

> "* * * should have the right to assume that the transportation officer has fulfilled his/her responsibilities and has acted in accordance

> with the regulations when [the employee is] provided an itinerary and a GTR [Government Travel Request]. To assume otherwise would mean that every action, even decisions made by our superiors, would have to be questioned until proven to be in accordance with rules and regulations."

Thus, questions are raised concerning holding travelers personally liable for the expense of travel in violation of the Fly America Act, even though they do not make or specify those travel arrangements.

Additionally, it is suggested that since the transportation officer did not explain why certificated carrier service was not used, the fact that the agency's policy is to schedule travel by foreign carriers only when service on certificated carriers is unavailable, creates and supports the presumption of the unavailability of such service at the time the subject travel was performed. Thus, the problem of the travelers' liability could be resolved by their submission of statements indicating that the needs of their missions could only be met by the use of foreign carriers.

Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. § 1517 (1976), better known as the Fly America Act, prohibits the expenditure of appropriated funds for Government-financed foreign air travel by noncertificated (foreign-flag) carriers if service by certificated carriers is available. The Comptroller General is statutorily required to disallow any expenditure from appropriated funds for international transportation of personnel or cargo on noncertificated air carriers in the absence of satisfactory proof that such travel was necessary.

The Fly America Act is a statutory mandate that is binding upon all Government travelers. Matter of Kotas, B-194779, August 5, 1980, and Matter of Young, B-192522, January 30, 1979. Therefore, in spite of any regulatory responsibilities imposed by the agency upon travel officers to schedule employees' travel arrangements, the travelers must bear personal liability for travel performed in violation of the statute, for appropriated funds may not be expended for the cost of such travel. Matter of Longo, B-202691, December 23, 1981, and Matter of Jaspal and Goode, 60 Comp. Gen. 718 (1981). Moreover, liability may not be imposed upon the transportation officers since the scheduling of employees' travel is a matter within the scope of their official duties for which personal liability may not be imposed since there is no authority which holds such officers accountable for errors of

judgment. See Matter of Longo, supra, and cases cited therein. Accordingly, the travelers must bear the cost of the travel in question unless it is satisfactorily proven that their travel by non-certificated carriers was necessary.

The suggestion that the travelers could be relieved of their personal liability for foreign carrier service by filing a statement indicating that the needs of their missions could only be met by the use of foreign carriers does not comport with the statutory requirements. Although the implementing guidelines for the "Fly America Act" issued by the Comptroller General on March 12, 1976, B-138942, provide that all expenditures for commercial transportation on non-certificated air carriers will be disallowed unless there is attached to the voucher a certificate or memorandum adequately explaining why service by certificated air carriers is unavailable, we have held that:

> "* * * A certificate by the traveler stating that his use of foreign carriers was necessary is not in itself sufficient to authorize reimbursement for the cost of his flight." Matter of Mitchell, B-203010, August 4, 1981.

The provisions of the Guidelines have been incorporated in Volume 2 of the Joint Travel Regulations (2 JTR), paragraph 2204, which sets forth specific conditions and procedures required to support a determination of the unavailability of certificated air carrier service.

Paragraph 2204 requires that the determination that certificated flights are unavailable because of the requirements of the Government's mission or needs be made by the authority issuing the travel orders. In addition, a certificate or memorandum adequately explaining why certificated carrier service is unavailable must accompany the traveler's voucher for reimbursement. 2 JTR, paragraphs 2204 and 2206. Such explanation must provide adequate proof of the necessity for using foreign air service. Matter of Mitchell, supra. See also Matter of Young, B-192522, April 22, 1981, and Matter of Fiore, B-193620, January 10, 1979. Thus, the statutory requirements may not be circumvented simply by an unsubstantiated claim of unavailability of American carrier service. Contrary to the position advanced by Washington, Headquarters Services, the fact that under the regulations the transportation officer is to schedule international travel on foreign carriers only when service on certificated carriers is unavailable does not support a presumption that certificated carrier service was not

available. Moreover, the agency disbursing officer has indicated that while availability of certificated carrier service cannot be determined at this time due to the possibility flights were full, certificated carriers did operate regularly over the routes involved in these cases.

We conclude, therefore, that in the absence of a verifiable statement by the transportation or other appropriate officer certifying the unavailability of American carrier service for the subject travel, the validity of these claims is too doubtful to warrant authorization of payment by this Office, and the collection actions taken by the disbursing officer appear proper.

Milton J. Socolar

Acting Comptroller General
of the United States