

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

25261

FILE: B-209957**DATE:** July 6, 1983**MATTER OF:** Nelson P. Fordham

DIGEST: Employee of the Navy en route from temporary duty overseas selected a particular schedule for the purpose of taking leave along a usually traveled route. He used a foreign air carrier for one leg of his travel even though he could have used Military Airlift Command (MAC) chartered air service for travel from his place of origin to the United States. Since MAC full plane charter services need not be considered as available U.S. air carrier under the Fly America Act his use of a foreign air carrier may be justified in the usual manner using only available commercial flights. However, under his travel order and applicable regulation reimbursement for return travel is limited to the constructive MAC cost.

Mr. Nelson P. Fordham, an employee of the Navy, appeals our Claims Group's denial of reimbursement for overseas travel on a foreign air carrier when returning to the United States after performing temporary duty. Mr. Fordham claims that there were no U.S. air carriers available along a part of the return route he selected and that his use of the foreign air carrier for a part of the return route was justified. Although under the rules applied pursuant to the Fly America Act, 49 U.S.C. § 1517, we find that a U.S. air carrier was not available along the usually traveled route used by Mr. Fordham, he is not entitled to further reimbursement because the limit on reimbursement imposed by the Navy resulted from his use of commercial rather than Military Airlift Command service.

Mr. Fordham performed temporary duty in Rota, Spain, in the summer of 1979. His travel orders indicated that both commercial and Government air were authorized and considered advantageous to the Government, and he was issued a commercial round-trip ticket for the travel involved. However, while Mr. Fordham was in Rota, he was ordered to proceed to Naples, Italy, to perform additional temporary duty. Before his temporary duty in

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Naples was completed, the Navy authorized him to travel through Paris for leave purposes on his return from Naples to the United States. This authorization also stated, "Additional TRS costs, if any, will be borne by Mr. Fordham." At the completion of his temporary duty in Naples, Mr. Fordham went to the transportation office there to secure transportation back to the United States through Paris as authorized. Because of the added cost involved and the fact that the transportation office could not secure confirmed reservations on U.S. air carriers, Mr. Fordham made his own arrangements for return travel. He traveled by rail to Rome, the nearest large interchange point for airline service. He states that U.S. air carriers could not get him out of Rome on any route back to the United States for 4 or 5 days-- apparently the result of an airline strike. Therefore, he took a foreign air carrier from Rome to Paris and after his period of leave, he obtained transportation to the United States by U.S. air carrier. He paid for this transportation with the ticket which had been issued to him for return direct from Rota, Spain.

The Claims Group denied reimbursement for use of the foreign air carrier because airline schedules showed daily non-stop service between Rome and New York on U.S. air carriers and because there was no certificate or memorandum by the transportation officer or other appropriate officer explaining Mr. Fordham's use of the foreign air carrier between Rome and Paris. The stop in Paris for leave was characterized as a side trip or indirect travel. Mr. Fordham argues that his travel order, as amended, "directed" him to return to his duty station by commercial air through Paris. From this premise he further argues that the certificate that he executed describing the actual facts concerning the travel justifies the use of the foreign air carrier along the "directed" route, based upon applicable Fly America principles.

Use of Military Airlift Command Transportation

Mr. Fordham's travel order did not direct him to travel by way of Paris but authorized that routing at no added cost to the Government. Other policies of the Navy limited reimbursement to the cost of travel on aircraft chartered by the Military Airlift Command (MAC) from Naples to Philadelphia.

Pertinent regulations provide:

"* * * Air travel is the normal mode of transportation to, from, or between areas outside the United States. Maximum use will be made of Government air or Government-procured air transportation. * * *" 2 Joint Travel Regulations (JTR) para. C2001-4(a) (change 162, April J, 1979).

"Overseas Travel. Travel may be required by MAC aircraft including charter or individually ticketed commercial service made available by that command, unless medically contra-indicated, for:

- "1. employees performing temporary duty travel to and from continental United States or between overseas duty points * * *."

2 JTR para. C2001-4(c) (change 162, April 1, 1979).

The Navy did require their employees to use MAC aircraft on temporary duty between overseas points and the United States. Enclosure 2 of Bureau of Naval Personnel Instruction 4650.14F. If Mr. Fordham had not specifically requested authority to travel through Paris, the transportation office in Naples would have made arrangements for him to travel on a MAC flight between Naples and Philadelphia with commercial connections to Florida. The Commander, Naval Military Personnel Command, who is responsible for making travel arrangements for Naval employees, found that this flight was available for Mr. Fordham. Since this particular flight was the charter of an entire airplane reserved exclusively for Department of Defense personnel, it would have been unaffected by the airlines strike that apparently did affect commercial U.S. air carriers. Although Mr. Fordham would not have been able to obtain space on that flight by himself, the transportation office in Naples could and would have placed him on that flight, according to the regulations cited had he not chosen to travel via Paris.

His situation is described by 2 JTR para. C2001-3(b), which states in part:

"Employee Elects Commercial Air or Water. When an employee who is authorized to utilize available MAC or MSC facilities in connection with temporary duty or permanent duty travel elects to utilize commercial air or water transportation at his own expense, reimbursement will be limited as provided in par. C5100. * * *."

Paragraph C5100 allows reimbursement to the extent of the cost of the MAC transportation when there is an appropriate statement on the travel order. Since there was an amendment authorizing travel by way of Paris return costs, up to the MAC fare, were allowable.

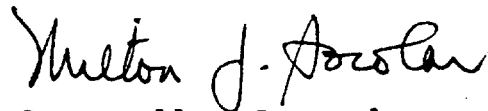
Fly America Act Considerations

The travel conditions described by Mr. Fordham indicate that the use of the Military Airlift Command full plane charter flight was the only way he could have traveled from Naples to the continental United States on U.S. air carriers. However, the use of MAC charter flights by employees is not covered by the Fly America Act because the procurement of the transportation from an appropriate carrier has been accomplished by MAC. Use of the flight by individuals and payment to MAC for that service is an internal Government matter, not a procurement of transportation services as covered by the Fly America Act. Therefore, we do not find that the available MAC charter flight should be used in determining whether an individual violated the Fly America Act provisions when, as here, commercial transportation is authorized at a cost not to exceed that of MAC transportation. However, the Fly America Act provisions must be applied to the available commercial air transportation in the usual manner as if such travel were authorized as advantageous to the Government, i.e., as if the costs were not limited to MAC costs. Then, within the MAC cost limitation, it should be determined if a Fly America Act penalty must be applied.

We have not overlooked B-138942, November 6, 1978, in which it was held that MAC flights could not be used if use of such flights made it necessary for the traveler to use foreign air carriers to a greater extent than would be necessary for travel by commercial carrier. That rule is not incompatible with the result here since the rule stated is that MAC flights need not be considered as available U.S. carriers in making Fly America Act determinations.

In this case since Mr. Fordham traveled by a direct route and used American carriers to the maximum extent possible in the circumstances, no Fly America Act penalty is applicable.

In the computation of Mr. Fordham's reimbursement it does not appear that a Fly America Act penalty was applied. However, it seems that he was allowed his cost of transportation limited only by the comparative cost of MAC transportation. This resulted in his owing the Government \$90.45 because his allowable costs were less than his travel advances in that amount. Thus, although we find that the reasons given by the Claims Group for disallowing Mr. Fordham's claim were not correct, we cannot allow his claim and, in the circumstances, we find that Mr. Fordham was properly required to refund the amount in question.



Acting Comptroller General
of the United States