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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Michael Farbman, et al. - Personal Use of
Airline Promotional Material

File: B-220542, B-220542.2, B-220542.3, B-220542.4,
B-220542.5

Date: November 16, 1987

DIGEST

1. Five AID employees traveling on official business participated in airline frequent flyer programs and earned free tickets which they used for personal travel. AID found the employees liable for the value of the tickets used and the employees appeal. Decisions of the Comptroller General have consistently applied the rule that airline promotional mileage credits earned on official travel may only be used for official travel and may not be used by employees for personal travel. Thus, the employees are liable for the full value of the tickets. Erroneous advice of agency officials cannot defeat application of the rule.

2. The rule requiring an employee to account for airline promotional material earned on official travel applies to benefits such as accommodation upgrades to business class or first class when they are obtained in exchange for mileage credits. Therefore, an employee may not exchange mileage credits for accommodation upgrades absent authorization or approval by the appropriate agency official. 63 Comp. Gen. 229 (1984) clarified. The restrictions on the use of first-class travel contained in FTR para. 1-3.3d now apply to upgrades obtained in exchange for mileage credits, but could be revised in order to maximize the integration of airline incentive programs into agency travel plans. Collection of the value of the unauthorized or unapproved upgrades used prior to this decision is not required.

DECISION

Five employees of the Agency for International Development (AID) appeal that agency's determination that they are liable for the use for personal travel of airline promotional mileage credits earned on official travel. The appeals are denied and the employees remain liable for the value of the personal trips, notwithstanding that such use was approved by agency officials and that the employees may have used the airline mileage credits prior to learning of regulatory and decisional authorities prohibiting such use.

Each of the five AID employees utilized airline mileage credits earned on official government travel to obtain free airline tickets for themselves, and in several cases their dependents, for personal travel. The trips that the employees or members of their families took and the amounts of the resulting indebtedness are as follows:

Michael Farbman: Indebted for \$2,070 representing the value of tickets issued to Susan Farbman for travel from Washington, D.C., to San Juan, Puerto Rico, and return during September 1983.

Martin J. Forman: Indebted for \$6,020 representing the value of tickets issued for the travel of his daughter from Washington, D.C., to Nairobi, Kenya, and return in October 1984; the travel of his wife from Washington, D.C., to Geneva and return in February 1985; and the travel of his wife from Washington, D.C., to Geneva and Rome and return during February 1986.

Leo L. LaMotte: Indebted for \$5,592 representing the value of tickets issued for his and his wife's travel from Washington, D.C., to Tokyo, Hong Kong and Singapore, and return during December 1983.

John I. McKigney: Indebted for \$2,764.77 representing the value of tickets issued to Mrs. John McKigney for travel from Washington, D.C., to Tokyo, Singapore, and Hong Kong and return during October and November 1983.

Eugene S. Staples: Indebted for \$2,274.90 representing the value of tickets issued to Suzanne Staples for travel from Washington, D.C., to Tokyo and Manila and return during August 1983.

These employees' use of the airline promotional awards was discussed in our report "Use of Airline Bonus Awards by AID Employees," NSIAD-86-217, B-220542, September 26, 1986.

The AID employees contend that they should not be held liable for the value of the personal trips. Although based on slightly different premises, the essence of each employee's argument is that he was unaware of the prohibition against personal use of airline mileage credits earned on official travel and that he acted in good faith. Messrs. LaMotte and Staples state that they consulted AID's Office of the General Counsel and other agency officials before converting the airline mileage credits to their

personal use and were advised that it would not be contrary to AID policy to accept free travel since AID would not be able to use the tickets. AID supports the employees, contending that the rules regarding the use of airline promotional material were unclear at the time the travel was performed.

While we do not question the good faith of the AID employees or the agency, we cannot agree that their lack of knowledge provides a basis for not holding them liable for personal use of promotional benefits earned on government travel. A brief review of the history of the applicable rule shows that the prohibition against an employee's use of airline mileage credits for personal travel has been applied consistently by this Office to prohibit such use. The basis for the rule was stated in a July 15, 1981 decision, Gifts or Prizes Acquired in the Course of Official Travel Assignments, B-199656 (quoting from the digest):

"It is a fundamental rule of law that a Federal employee is obligated to account for any gift, gratuity, or benefit received from private sources incident to the performance of official duty * * *."

That decision applied the rule to airline promotional programs. Specifically, we held that employees may not retain any half-fare coupon or bonus point or similar item of value which is only awarded incident to and on the basis of the purchase of an airline ticket used for official travel.

The rule has been applied to prohibit employees' personal use of airline mileage credits earned on official travel despite ever-changing airline promotional programs. Thus, in Discount Coupons and Other Benefits Received in the Course of Official Travel, 63 Comp. Gen. 229 (1984), we held that employees could not use travel bonuses for personal travel even if the government was unable to take advantage of the promotional award prior to its expiration. 63 Comp. Gen. 229, at 232 (Answer to Question 4).

In a companion decision we applied the rule to deny an employee's personal use of a promotional travel award even if the government was unable to use the award because the airline programs limited in some fashion the transferability of the award. John D. McLaurin, 63 Comp. Gen. 233 (1984). The most recent restatement of the rule is perhaps the most succinct--"Government coupons [that is, coupons earned on official travel] should be used for Government purposes only * * *." Phillip E. Trickett, B-224054, March 17, 1987.

As can be seen, the rule has been unaffected by variations in the conditions or terms of an airline promotional program. Because our decisions in this area have followed the long-existing rules and regulations against personal use of promotional material, we have held employees liable for the value of the benefits received regardless of when the travel was performed. John D. McLaurin, supra. In that case, we required the employee to pay the full value of the bonus tickets used even though the tickets were used prior to our Discount Coupons decision.

Each AID employee contends that he was unaware of the prohibition and that he acted in good faith in utilizing the government-owned mileage credits. Messrs. Staples and LaMotte also note that they obtained agency approval to utilize the mileage credits for personal use. Enforcement of the laws and regulations governing the employment of Federal government employees cannot be contingent upon knowledge of such rules by the affected employees. Neither the erroneous advice or authorization of an official nor the lack of knowledge of the rule create a right where one does not otherwise exist. See, e.g., Riva Fralick, 64 Comp. Gen. 472 (1985); Reimbursement for Relocation Expenses, 54 Comp. Gen. 747 (1975). Thus, the erroneous advice provided by AID officials to Messrs. Staples and LaMotte to the effect that the personal use of the travel bonuses was not objectionable cannot defeat application of this rule.

In sum, the rule prohibiting the use for personal travel of bonus mileage credits earned on official travel has been applied clearly and consistently in our decisions. There is, however, one area of uncertainty in our prior decisions concerning airline promotional benefits--the use of mileage credits earned on official travel for accommodation upgrades. We discussed and clarified this area in our 1986 report "Use of Airline Bonus Awards by AID Employees," supra. While not pertinent to the cases of the five AID employees before us now, we will take the opportunity to reiterate that clarification here.

Our 1986 report identified several instances in which AID employees had used bonus mileage credits which otherwise could have counted toward free trips in order to upgrade their accommodations on official travel from economy class to either business class or first class. This use of bonus mileage credits for accommodation upgrades was based on the employees' and AID's interpretation of a portion of our decision 63 Comp. Gen. 229, cited previously, which held:

"* * * items such as free upgrade to first class, membership in executive clubs, and check-cashing privileges * * * could only be used by the

employee and could not be used by the Government. Therefore, we see no reason that these items could or should be turned over to the Government. We also hold that the employee may use such benefits because denying the employee such benefits would serve no purpose." 63 Comp. Gen. 229, at 232 (Answer to Question 3).

As indicated, this holding dealt only with "free" accommodation upgrades and other promotional benefits which could have no value to the government. The 1984 decision did not specifically address the redemption of mileage credits for program benefits such as accommodation upgrades, nor was it our intent to give employees the option of redeeming mileage credits for this purpose without government approval. Allowing employees to use mileage credits for accommodation upgrades without government approval would conflict with the general rule in our line of decisions dating back to B-199656, July 15, 1981, and with the General Services Administration (GSA) regulations which hold that all bonus mileage earned as a result of official travel becomes the property of the United States Government and must be accounted for by employees. Thus, the GSA regulations, 41 C.F.R. § 101-25.103-2 (1986), citing our 1981 decision, state in part:

"(a) All promotional materials (e.g., bonus flights, reduced-fare coupons, cash, merchandise, gifts, credits toward future free or reduced costs of services or goods, etc.) received by employees in conjunction with official travel and based on the purchase of a ticket or other services (e.g. car rental) are properly considered to be due the Government and may not be retained by the employee. * * *

"(b) Promotional coupons that provide for future free or reduced costs of services (travel) should be integrated into the agency travel plans to maximize the benefits to the Government. * * *"

Consistent with these principles, the rule prohibiting government employees from converting airline promotional items earned on official travel to their personal use also applies where an accommodation upgrade is obtained in exchange for bonus mileage credits. Therefore, employees must account for all mileage credits and may not exchange them for accommodation upgrades or other benefits absent authorization or approval. Currently, agency officials do not have authority to permit the use of first class air accommodations except as provided in the GSA regulations.

However, there is no statutory restriction on employees' using first class accommodations. See 5 U.S.C. § 5731 (1982). As a matter of policy, GSA has restricted the use of first class airline accommodations to the conditions set forth in paragraph 1-3.3d of the Federal Travel Regulations. In our view, GSA could amend its regulations to permit redemption of airline mileage credits to upgrade government purchased tickets to first class as part of a plan to maximize the integration of these incentive programs into agency travel plans. This would not only provide agencies with flexibility to efficiently manage their travel programs, but would also allow agencies to provide an incentive to their employees to participate in frequent flyer programs for the benefit of the government.

Finally, because the restrictions on the use of bonus mileage credit for accommodation upgrades had not been addressed specifically in our prior decisions, and in view of the practical difficulties of identifying airline tickets that have been upgraded, we will not require agencies to collect the value of unauthorized accommodation upgrades used prior to the date of this decision.

for 
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