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DECISION

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

FILE: B-202599

DATE: September 29, 1981

MATTER OF: Jasinder S. Jaspal and Claude A. Goode--Fly America Act--Travelers' Liability

DIGEST: Employees who travel overseas on foreign air carrier when service by U.S. air carriers is available in violation of Fly America Act are personally liable for cost even though they may have been ignorant of the Act and relied upon arrangements made by Government contractor. However, if contract contains provision by which contractor may be held accountable for such scheduling errors, employee's liability may be shifted to contractor.

The authorized certifying officer for the Chicago Operations and Regional Office, Department of Energy (DOE), has asked whether Mr. Jasinder S. Jaspal and Mr. Claude A. Goode may be reimbursed for certain transoceanic portions of their air travel to and from the United States via foreign air carriers although U.S. air carrier service was available. The issue in this case is whether the DOE employees may be relieved of liability for travel by foreign air carriers because the flights in question were booked by a DOE contractor. We find that the fact that travel arrangements were made for a Government traveler does not amount to adequate justification for use of a foreign air carrier under 49 U.S.C. 1517, as amended, commonly referred to as the Fly America Act.

The chief of the Production Branch, Mr. Goode, and one of his mining engineers, Mr. Jaspal, both from the Pittsburgh Mining Technology Center, DOE, were scheduled to travel together to visit certain mines and factories abroad which were the subject of a DOE contract. Boeing, Services Int., a DOE contractor responsible for booking transportation for DOE employees, made travel arrangements for Mr. Goode and Mr. Jaspal and booked them on the same foreign air carriers for the portions of the trip from New York to London and return. Although the travelers were originally scheduled on the supersonic foreign air carrier, Concorde, from New York to London, the Government Travel Request (GTR) did not authorize payment of the amount by which the Concorde fare exceeded the regular economy fare. Upon arriving at the airport and finding they would otherwise be responsible for the substantial fare differential, the employees rescheduled

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their travel from New York to London aboard a British Airways Flight which departed 5 hours later. The travelers departed together on the same foreign air carrier although U.S. air carrier service to London was available at the same time.

Mr. Jaspal included a certificate with his travel voucher explaining the use of the foreign air carrier in these words:

"I certify that it was necessary for Jasinder S. Jaspal to use British Airways Flight 174 between New York City, New York and London, England on April 6, 1980 due to the following reason:

"Boeing Services, Int. erroneously booked the traveler on the Concorde--traveler waited for the next available flight which was 10 hours later on the British Airways flight BA174."

Mr. Goode also included a certificate with his travel voucher that was substantially the same.

After performing duty in Germany, Poland, and Hungary, Mr. Jaspal and Mr. Goode returned from Hungary through London to Pittsburgh. Mr. Goode took the foreign air carrier from London to New York that the contractor booked him on without providing any justification for its use, even though a U.S. air carrier departed at exactly the same time. Mr. Jaspal delayed his return 2 days for personal business and rescheduled his travel aboard a U.S. air carrier from London to New York.

Since 1975 the Fly America Act has required the use of U.S. air carriers for international air travel paid for from appropriated funds if service by such carriers is available, and has imposed a nondiscretionary duty on the Comptroller General to disallow expenditures from appropriated funds for such travel by foreign air carriers in the absence of satisfactory proof of the necessity therefor. The implementing guidelines, B-138942, issued March 12, 1976, and revised March 31, 1981, as the result of a 1980 amendment to the Act, define for travelers the conditions under which U.S. air carriers will be considered to be available, or the use of foreign air carriers will be considered to be necessary. Under the guidelines U.S. air carriers were available for

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travel from New York to London and Mr. Goode's travel from London to New York because U.S. carriers were scheduled for departure at exactly the same time as the foreign air carriers on which the employees performed their travel. The only justification given by the travelers for the use of the foreign air carriers was that the Government contractor had made a booking error.

Because the requirement for the use of U.S. air carriers is imposed directly by statute, all persons are charged with knowledge of it. Catherine Benton, B-188968, August 8, 1977. For this reason and because Government funds may not be used to pay for unnecessary travel by foreign air carrier, we have held that the traveler is personally liable for any costs incurred because of his failure to comply with this requirement. He is not relieved of this responsibility merely because he relied upon the advice or assistance of others in arranging his travel. See B-189711, January 27, 1978, and Robert A. Young, B-192522, January 30, 1979.

Accordingly, reimbursement for the cost of Mr. Goode's travel between New York and London and Mr. Jaspal's travel from New York to London may not be allowed. In most situations the determination of the exact amount to be disallowed by the formula set forth in 56 Comp. Gen. 209 (1977) and the revised guidelines is a routine matter. However, in this case the fare authorized on the GTR and presumably paid by DOE appears to be excessive. In order to avoid charging the employees more than is required, the General Services Administration should be asked to verify the fares charged under the procedures at 41 C.F.R. 101-40.301 (1980).

Further, although the matter was not brought up in the submission, the contractor rather than the employees might be liable for the penalty assessed because it scheduled the travel in violation of the Fly America Act. Its liability would of course depend upon the provisions of the contract with DOE which has not been furnished us.


Acting Comptroller General
of the United States