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DECISION



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

Castrowood

2-0876

FILE: B-203625

DATE: February 22, 1982

MATTER OF: Staff Sergeant Juan M. Ovalle, USA

DIGEST: Service member who travels overseas on a foreign air carrier when service by a United States air carrier is available, in violation of the Fly America Act, is personally liable for the air fare even though he may have been ignorant of the Act and misunderstood terminology in his travel orders directing the use of United States air carriers.

Staff Sergeant Juan M. Ovalle, USA, appeals our Claims Group's denial of his claim for reimbursement for overseas travel on a foreign air carrier. The issue in this case is whether Sergeant Ovalle may be reimbursed for travel on a foreign air carrier in violation of the Fly America Act because he was ignorant of the Act and did not understand the direction in his travel orders to use United States air carriers. The requirement for use of United States air carriers when they are available is imposed directly by statute, and all persons are charged with knowledge of it. Its application is mandatory and may not be waived. Therefore, reimbursement may not be allowed.

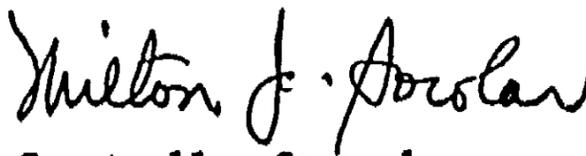
Sergeant Ovalle reenlisted in the Army in California in June 1980 and was assigned to the Republic of South Korea in July 1980. His travel orders stated "Authority is granted to fly at personal expense by commercial (US FLAG) carrier." He paid \$347 for a ticket to Seoul, Korea, on Japan Airlines, a foreign air carrier, and was denied reimbursement by the Army. Sergeant Ovalle does not claim that United States air carriers were not available, nor does he claim that his use of a foreign air carrier can be justified as a matter of necessity or governmental agreement. These are the exceptions which apply to the statutory requirements that United States flag (certificated) air carriers be used for transportation which is to be paid for by Government funds. See section 1117 of the Federal Aviation Act of 1958, as added by Public Law 93-623, January 3, 1975, 88 Stat. 2104, and amended by section 21 of the International Air Transportation Competition Act of 1979, Public Law 96-192, 94 Stat. at 43-44, 49 U.S.C. § 1517, commonly known as the Fly America Act. Sergeant Ovalle claims that he was not aware of the Fly America Act and that he was not aware that the term "US FLAG" on his travel orders restricted his choice of commercial air carriers to United States air carriers. He also states that he was not counseled about the meaning of the terminology or about the Act's requirements before he made his travel arrangements.

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The original Fly America Act was effective January 3, 1975. Since then our Office has issued guidelines implementing the Act, as have the uniformed services in the Joint Travel Regulations, which applied to Sergeant Ovalle's travel. Although, as he indicates, Sergeant Ovalle may have spent 10 years in the Army without specifically being acquainted with the Act's provisions, the requirement that United States air carriers be used for Government travel when they are available is statutory, and all are deemed to be on notice. Arnold J. Jacobius, B-186007, November 15, 1976. The Act states that "The Comptroller General of the United States shall disallow any expenditure from appropriated funds for payment for personnel or cargo transportation in violation of this section in the absence of satisfactory proof of the necessity therefor." This provision is mandatory and may not be waived.

It is unfortunate that Sergeant Ovalle did not understand the terminology and that he was not given nor did he request an explanation of its meaning before he completed his travel arrangements on Japan Airlines. However, that is not a basis for us to relieve him from personal liability for a violation of the Act. See Catherine Benton, B-188968, August 8, 1977.

Accordingly, we sustain our Claims Group's disallowance of Sergeant Ovalle's claim.

for 
Comptroller General
of the United States