

DECISION



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

12246

S. Feinberg
Trans

FILE: B-188227

DATE: December 10, 1979

MATTER OF: District Containerized Express-- C. 857
[Request for Reconsideration]
DIGEST:

Where carrier submits evidence of air freight charges paid, part of which were improperly diverted from American-flag air carrier contrary to the Fly America Act, its bill for through door-to-door transportation charges, less air freight charges improperly diverted as determined by the mileage proration formula in 56 Comp. Gen. 209 (1977), may be certified for payment.

District Containerized Express (District) requests reconsideration of our decision of May 8, 1978, B-188227. In that decision, we held that District's bill for additional freight charges of \$237.50 allegedly due for the door-to-door through transportation of part of the personal effects of an employee of the General Accounting Office (GAO) from a warehouse in Bladensburg, Maryland, to Frankfurt, Germany, could not be certified for payment since on the record before us District was not billing in the name of the principal carrier contrary to regulations issued by the General Services Administration. 17
Also, contrary to regulations implementing Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. 1517 (1976) (Fly America Act), District presented no evidence justifying the use of a foreign-flag air carrier for part of the transportation when an American-flag air carrier was available. District's bill number is DCE 1032.

The employee's travel orders authorized the transportation of 875 pounds of air freight from his official station in Washington, D.C., to Frankfurt at the Government's expense. In August 1976, District was authorized under Government bill of lading No. K-0283598 to transport about 875 pounds of freight from Sterling, Virginia, to Frankfurt, Germany. District has been paid \$553.75 which covered the through door-to-door transportation of

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3 443 pounds of the air freight. In September 1976, District states that the employee gave it an additional 190 pounds of freight at Bladenburg, Maryland, for air shipment to Frankfurt. We are satisfied that the additional weight was part of the weight authorized on the GBL. District packed the 190-pound shipment and tendered it to Trans World Airlines (TWA) at Dulles International Airport, Virginia, for transportation to Frankfurt. TWA, in Paris, France, interlined the shipment with Lufthansa, a foreign-flag air carrier, who transported it to Frankfurt. District also provided for delivery services in Germany. c781

District contends that it should not be penalized the entire cost of transportation since that cost included transportation to and from the airports, as well as American-flag air carrier service from Dulles to Paris.

4 In support of its request for reconsideration, District has provided a copy of Operating Authorization No. 404, issued by the Civil Aeronautics Board (CAB), which gives District the authority to engage in business as an international air freight forwarder. It has also provided documents from TWA showing that the cost for transporting the air freight to Frankfurt via Paris was \$184.30, the same charge as direct air service on Pan American Airways from Washington to Frankfurt. c505 109

As we stated in our prior decision, Section 101-41.310-4 of the Federal Property Management Regulations Temporary Regulation G-23, which was in effect at the time of the shipment, states that a bill is payable to an agent of a carrier so long as the bill is submitted in the name of the principal carrier or forwarder. Based on the record then before us we determined that District must have been the agent for Van Pac Carriers, a carrier also listed on the GBL, since we were aware that District had no operating authority in its own name from the Interstate Commerce Commission to transport the shipment. See Bud's Moving & Storage, Inc., Declaratory Order, 128 M.C.C. 56 (1976). However, CAB Authorization No. 404 gives District operating authority to act as an international air freight forwarder ". . . in overseas and foreign air transportation." Based on this new evidence, District is the proper payee on the voucher.

Payment of all transportation charges on District's vouchers would violate the provisions of the Fly America Act which provides:

"* * * The Comptroller General of the United States shall disallow any expenditure from appropriated funds for payment for such personnel or cargo transportation on an air carrier not holding a certificate under Section 401 of this Act in the absence of satisfactory proof of the necessity therefor. * * *"

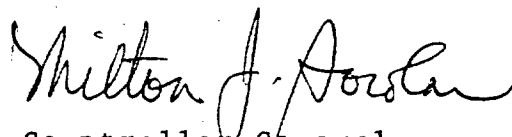
In cases involving passenger air travel we have held that where the travel is improperly routed so that foreign-flag air carriers are used when American-flag air carrier service is available, the Government will not pay the portion of the air fare which was improperly diverted from the American-flag air carriers. 58 Comp. Gen. 612 (1979); 56 Comp. Gen. 209 (1977). We also have adopted the use of a mileage proration formula described in 56 Comp. Gen. 209 to determine the amount of revenue improperly diverted from American-flag air carriers. Applying that rule and formula to this case, District's liability for the use of foreign-flag air service from Paris to Frankfurt is \$12.94.

Section 901 of the Merchant Marine Act of 1936, 46 U.S.C. § 1241(a) (1976), a statute similar to the Fly America Act, makes use of American-flag ships mandatory unless it can be proven that it was necessary to use a foreign-flag ship. In cases involving Section 901 we have held that when the carrier submits evidence of ocean freight charges paid to the foreign-flag carrier, its bill for through door-to-door transportation charges less the ocean freight charges may be certified for payment. B-188186, September 5, 1979. We believe that a similar rule should apply to cases involving the Fly America Act.

District submitted copies of the bill from TWA and District's check showing payment of the air freight charges. Therefore, we today have advised GAO's authorized certifying officer that District's bill number DCE-1032, if otherwise proper, may be certified for payment of \$224.56, which represents the through

door-to-door transportation charges billed less the amount improperly diverted from American-flag air carriers as determined by the mileage proration formula.

Our prior decision is modified accordingly.

A handwritten signature in cursive script, reading "Milton J. Jordan". The signature is written in dark ink and is positioned above the typed name and title.

For The Comptroller General
of the United States