17851 Schweiker

DECISION

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

FILE: B-192522 DATE: April 22, 1981

MATTER OF: Robert A. Young - Fly America Act

DIGEST: Employee who travels overseas on foreign air carrier where there is no showing that certificated U.S. air carriers were not available to transport him is in violation of Fly American Act and is personally liable for the cost.

This action is in response to a request for reconsideration of our decision Robert A. Young, B-192522, January 30, 1979, which was submitted through the Per Diem, Travel and Transportation Allowance Committee, and was assigned PDTATAC Control No. 80-29. That decision held that Mr. Robert A. Young, Comptroller, Defense Property Disposal Service (DPDS), was personally liable for the cost of international travel on a foreign air carrier for round trip travel between Chicago and Frankfurt during November 1976, under the provisions of the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. § 1517 (1976), more commonly known as the Fly America Act. During a GAO audit of certain accounts, it was discovered that Mr. Young also had made a trip on a foreign air carrier in September 1976. On the basis of our prior decision, his agency determined that Mr. Young owed an additional $691.40 for that trip.

Mr. Young has requested that we reconsider our prior decision and that we relieve him of liability for both trips. In the alternative, Mr. Young has requested that we waive payment of the debt if we cannot reverse our prior decision. We will examine his liability for each flight on a foreign airline separately.

Reconsideration of the January 30, 1979, Decision

The facts are set out at length in that decision and will be repeated only where necessary for clarity.

046620 115003

Mr. Young was found to be personally liable for the cost of travel on Lufthansa, a foreign air carrier, because U.S. air carriers were available to transport him to and from Frankfurt and Battle Creek, Michigan, within a few hours of the flights he took.

On appeal, Mr. Young has raised, among others, the following points concerning his use of foreign air carriers. First, Mr. Young states that he did not request any specific flight. He also states that he was unaware that there were alternate flights on U.S. air carriers available and that no representative of the United States Government informed him of these flights. Finally, Mr. Young states that on his return flight on November 17, 1976, when he changed his schedule from a Pan American flight to a Lufthansa flight he was informed that there were no flights by certificated U.S. carriers until the next morning. These facts and arguments were all presented and considered in reaching our first decision.

We are willing to further reconsider decisions upon receipt of new evidence. However, Mr. Young's correspondence contains no new evidence, but merely repeats previous statements and does not furnish the basis for formal reconsideration. As stated in the original decision, an employee has a duty to comply with the Fly America Act, and the fact that he was unaware of the requirements of the Act does not relieve him of liability for the cost of the flight. Also, although Mr. Young alleges that he was informed that no U.S. air carrier flights were available on November 17, the record shows that three U.S. air carrier flights were available. Therefore, Mr. Young's request for reconsideration is denied.

Liability for Flights During September 1976

The record shows that on September 8-9, 1976, Mr. Young flew on North Central Airlines from Detroit, Michigan, to Toronto, Canada, where he switched to Lufthansa for the flight to Frankfurt, Germany. On his return trip on September 22, he flew on Lufthansa from Frankfurt to Toronto and then switched to North Central

Airlines for the flight to Detroit. Mr. Young has not explained why he flew on the foreign air carrier, and there is no showing that U.S. air carriers were not available to transport Mr. Young from Detroit to Frankfurt.

As stated in our prior decision in this case, the Fly America Act makes mandatory the use of certificated U.S. air carriers for international air travel paid for from appropriated funds if such service is available. The Act also imposes 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 that it was necessary.

Based on the record before us, appropriated funds may not be used to pay the cost of Mr. Young's travel by foreign air carrier from Toronto to Frankfurt and return. There is no proof of the necessity of using foreign air carriers, and no showing has been made that U.S. air carriers were not available to transport Mr. Young to Germany and back. Therefore, Mr. Young is personally liable for such costs.

As to Mr. Young's request for waiver, the statute authorizing waiver of erroneous payments specifically excludes travel and transportation expense claims from the waiver authority of the Comptroller General or the head of an agency. 5 U.S.C. § 5584 (1976). Therefore, Mr. Young's request for waiver is denied.

Milton J. Socolar

Acting Comptroller General
of the United States