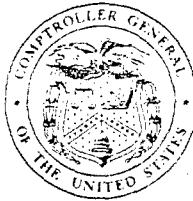


PLM-II

DECISION



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

9591

FILE: B-193419

DATE: March 29, 1979

MATTER OF: John D. Morten, Jr.

DIGEST: An Army member who travels with dependents to an overseas location on a foreign airline (one not holding a certificate under 49 U.S.C. 1371) is not entitled to reimbursement for such travel since reimbursement for travel on a foreign airline is prohibited by 49 U.S.C. 1517 and pars. M2150 and M7000-8, 1 Joint Travel Regulations, when United States certificated carriers are available.

[CLAIM for]

AGC00020

This action is the result of an appeal from settlement of our Claims Division dated August 22, 1978, denying the claim of Command Sergeant Major John D. Morten, Jr., USA, for personal and dependent travel incident to a permanent change of station due to use of a foreign-flag carrier. Sergeant Morten's claim must be denied for the following reasons.

The record shows that incident to a permanent change of station, Sergeant Morten was to be transferred from Fort Dix, New Jersey, to West Germany. It appears that he requested orders authorizing travel by commercial air carrier, which was granted. In that connection he secured the services of a travel agency which arranged his passage in July 1976 from New York to Frankfurt, West Germany, on Sabena Air Lines, a foreign-flag carrier. Apparently, in preparation for his departure from Fort Dix, New Jersey, various officials who were aware that he planned to travel on a foreign-flag carrier, did not inform him that reimbursement for such travel would not be made. Also, it appears that various forms and instructions he received made no reference to the regulations prohibiting reimbursement in certain circumstances for travel on a foreign-flag carrier.

The pertinent statute with respect to the member's travel allowances, 37 U.S.C. 404 (1976), provides that under regulations prescribed by the Secretaries concerned, members of the uniformed services shall be entitled to receive travel and transportation allowances for travel performed under competent orders upon a permanent change of station. Section 406 of title 37, United

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States Code, provides that under regulations prescribed by the Secretaries concerned, a member of a uniformed service who is ordered to make a change of permanent station is entitled to transportation at Government expense for his dependents or a monetary allowance in lieu thereof. However, section 5(a) of Public Law 93-623, approved January 3, 1975, 88 Stat, 2104, 49 U.S.C. 1517 (1976), provides, in pertinent part, that transportation of persons by air between a place in the United States and a place outside thereof shall be provided by air carriers holding certificates under section 1371 of that title (United States certificated carriers) provided such a carrier is available. The statute further provides:

"* * * The Comptroller General of the United States shall disallow any expenditure from appropriated funds for payment of such personnel or cargo transportation on an air carrier not holding a certificate under section 1371 of this title * * *."

In this regard paragraph M2150, Volume 1, Joint Travel Regulations (1 JTR) (change 276, February 1, 1976), which was in effect during the period of the member's travel, specifically provides that aircraft certificated under 49 U.S.C. 1371 will be used for all commercial foreign air transportation. Also, for dependent travel, paragraph M7000-8, 1 JTR (change 276) provides that members of the uniformed services are entitled to transportation of dependents upon a permanent change of station except for any portion of travel performed by a foreign registered vessel or airplane if American registered vessels or airplanes are available by the usually traveled route.

While it is unfortunate that the member was not advised that travel on a foreign aircraft would not be reimbursed, in the settlement of claims against the United States, we must comply with the applicable statutes and regulations. In view of the above there is no legal basis upon which we may allow the claim and, accordingly the settlement of August 22, 1978, is sustained.


Deputy Comptroller General
of the United States