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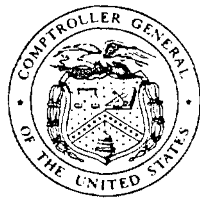
DECISION



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

[Application of Fly America Act To Claim Involving Involuntary Re-routing]

FILE: B-194375 DATE: January 23, 1980

MATTER OF: James A. Norberg - Fly America Act - involuntary re-routing

DIGEST: Employee was scheduled to travel on certificated U.S. air carrier and, upon arrival at airport was informed by carrier that it could not accommodate him and carrier re-routed him on foreign air carrier. U.S. air carrier service is considered unavailable and traveler is not subject to penalty for use of noncertificated carrier.

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The Nuclear Regulatory Commission (NRC) requests an advance decision concerning a specific claim by James A. Norberg, one of its employees, involving use of a foreign air carrier.

Mr. Norberg was on official travel in Austria. When he went to the airport he was told that because his scheduled Pan American flight had developed mechanical difficulties a smaller plan would be used for the flight from Austria to the United States. There was no room for Mr. Norberg on the smaller replacement aircraft and he was involuntarily re-routed by Pan American to a British Airlines flight to London where he transferred to a Pan American flight to the United States.

In connection with Mr. Norberg's claim for the airfare from Vienna to the United States without assessment of a penalty for his use of a foreign air carrier between Vienna and London, the NRC asks:

"1. Is a traveler required to wait up to the 48 hours specified in 56 C.G. 216, when he is informed upon arrival at the airport, that his scheduled flight cannot accommodate him for some reason?

"2. Should a traveler be assessed a penalty for the involuntary use of a foreign carrier when an American carrier, for some reason, provides alternate transportation on a foreign carrier?"

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The controlling statute is the Fly America Act, 49 U.S.C. § 1517. The Act's purpose is to ensure that Government revenues not benefit noncertificated foreign air carriers when certificated service by United States carriers is available. 56 Comp. Gen. 209 (1977). The Act requires the Comptroller General to disallow any expenditure from appropriated funds for transportation on a foreign air carrier in the absence of proof that such service was necessary.

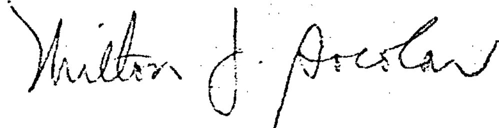
The Comptroller General's guidelines for implementation of the Fly America Act, B-138942, March 12, 1976, provide that a foreign air carrier may be used only when United States air carrier service is unavailable. These guidelines contain criteria for determining when service is considered unavailable but do not expressly address the situation in which a traveler is involuntarily re-routed by a United States carrier onto a foreign carrier at the initiation of his travel. In 56 Comp. Gen. 216 (1977) we noted that the unavailability criteria set forth in the guidelines are addressed to en route travel or elapsed traveltime and provide no guidance in determining the length of time an employee should delay his departure from point of origin to facilitate use of certificated United States air carrier service. We there held that if the total delay, including delay in initiation of travel, in en route travel and additional time at destination involves more than 48 hours additional per diem costs in excess of the per diem that would be incurred in connection with the use of noncertificated service, certificated service may be considered unavailable.

Our holding in 56 Comp. Gen. 216 places a high degree of responsibility on the Government traveler to schedule his travel for the benefit of United States air carriers. While that decision could be read as controlling in Mr. Norberg's and similar situations, we believe that where the employee has properly scheduled his travel and relied upon that scheduling and where his efforts are frustrated through no fault of his own but by the air carrier, there is adequate justification to consider that he has discharged that responsibility. We, therefore, find that Mr. Norberg was not obliged to further delay his travel in accordance with 56 Comp. Gen. 216 to make use of United States air carrier service.

Where, because of mechanical or other difficulties, a United States air carrier reroutes an employee's travel aboard a foreign air carrier, United States air carrier service may be considered unavailable. Insofar as the traveler is given a choice as to substitute service, he should of course reschedule his travel by United States air carrier if to do so will not unduly delay his travel. These principles apply to involuntary re-routings that occur en route as well as upon initiation of travel.

At the date of Mr. Norberg's travel, Pan American was the only United States air carrier serving Vienna and the afternoon flight on which he had reservations was the last United States air carrier departing that day. Because connecting service by way of Frankfurt, Germany, similarly was not available that day, Mr. Norberg's travel by foreign air carrier to London was proper even if he was provided a choice as to substitute service. Under the circumstances, London was the nearest practicable interchange point to connect with United States air carrier service.

Accordingly, Mr. Norberg is not subject to penalty under the Fly America Act for his use of a foreign air carrier between Vienna and London under the circumstances described above.



For The Comptroller General
of the United States