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DECISION



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

FILE: B-201777

DATE: May 6, 1981

MATTER OF: Ernest Michael Ward - Reimbursement of Government Employees for Transportation Purchased Through Travel Agents

DIGEST:

- (1) Civilian employee of Department of Army who purchased transportation with personal funds from travel agent in connection with official travel may be reimbursed under principle of this Office embodied in paragraph C2207-4 of Volume 2, Joint Travel Regulations, that a Government employee, unaware of the general prohibition against use of travel agents, who inadvertently purchases transportation with personal funds from a travel agent, may be paid for travel costs which would have been properly chargeable had requested service been obtained by traveler directly from carrier.
- (2) In the future this Office will review claims of Government travelers who violate the general prohibition by purchasing transportation with personal funds from a travel agent and claim reimbursement under exceptions such as that provided in paragraph C2207-4 of Volume 2, Joint Travel Regulations, to determine not only that the use of the travel agent was inadvertent and resulted from a lack of notice of the general prohibition, but also that these contentions regarding the use of the travel agent were themselves reasonable in the circumstances of the individual traveler's claim.

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Ernest Michael Ward, a civilian employee of the Department of the Army, requests reconsideration of our Claims Group's adjudication (Z-2827761) of November 17, 1980, denying his claim for reimbursement of additional airfare in connection with official travel he performed in July 1980.

Briefly, Mr. Ward performed round-trip air travel from El Paso, Texas, to Washington, D.C, in July 1980 incident to a temporary duty assignment in the Washington, D.C., area. Mr. Ward purchased a round-trip airline ticket with his own funds from a local travel agent prior to his departure date. Upon submission of his travel voucher Mr. Ward was reimbursed for only \$416 of his total \$554 expenditure. The agency pointed out that the particular airlines which Mr. Ward used offers a discount rate for the round-trip fare to Washington, D.C., when a Government transportation request is used. As a result, in accordance with paragraph C2207-4 of Volume 2, Joint Travel Regulations (JTR), his reimbursement was limited to the amount which he actually paid not to exceed the cost which would have been incurred if the transportation had been purchased directly from the carrier. This conclusion was reaffirmed by our Claims Group's adjudication of November 17, 1980, which determined that the agency had correctly applied the provisions of paragraph C2207-4 of 2 JTR.

In support of his present appeal Mr. Ward contends as follows:

"Your examination of my claim disallowed reimbursement by applying Joint Travel Regulation Vol 2, page C2207, para 4. The paragraph that is used to disallow my claim states 'When an employee purchases transportation with personal funds from a travel agent that employee will be reimbursed the amount paid not to exceed the cost which would have been incurred if the transportation had been purchased (sic) directly from the air carrier.' I am not in violation of this paragraph. There was no charge by the travel agent. The tickets would have cost the same if I had purchased them directly from the carrier. In your letter you stated that your 'office may settle claims only on a legal basis ... and may not modify the regulations (sic) ...' However, it appears that you have modified this regulation because you will not allow my claim although I am not in violation of the referenced regulation."

While we recognize the point Mr. Ward is making in regard to the fact that he may have had to expend the same amount (i.e., \$554) of personal funds to secure his ticket directly from the airlines, we do not agree that the price he paid was the lowest price available to the Government, nor do we accept his contention that he was not in violation of the controlling provisions of paragraph C2207, 2 JTR. Thus, we are disallowing Mr. Ward's appeal pursuant to the following analysis of reimbursement of Government employees for transportation purchased through travel agents.

Subchapter I of chapter 57 of title 5, United States Code (5 U.S.C. §§ 5701-5709), provides the comprehensive statutory authority pursuant to which employees are reimbursed for expenses incurred in connection with officially sanctioned Government travel. Pursuant to a statutory delegation of authority implementing regulations have been promulgated in the Federal Travel Regulations, as amended and supplemented (FPMR 101-7, May 1973). Volume 2 of the JTR is a restatement and implementation of the Federal Travel Regulations and consistent therewith provides among other things for the travel entitlements of civilian employees of the Department of Defense. As regulations implementing specific statutory authorities, the Federal Travel Regulations and Volume 2 of the JTR have the force and effect of law and may not be waived or modified by the General Accounting Office, an employing agency, or any employee.

Paragraph C2207 (change 131, September 1, 1976) of Volume 2 of the JTR provides that travel agencies may not be used to secure any passenger transportation service within the United States. However, in our decision, B-103315, August 1, 1978, we held that members or civilian employees of the uniformed services who individually and inadvertently purchase official transportation from a travel agent with personal funds without prior approval by the administrative office can be reimbursed in an amount which does not exceed charges which would have been payable if the transportation had been purchased directly from the carrier. We did require that those granted the individual exemption should be admonished that official Government travel ordinarily is purchased directly from the carrier in the absence of an advance administrative determination that group or charter fares sold by the travel agents will result in a lower cost to the Government and will not interfere with official business. Our decision has been incorporated in paragraph

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C2207-4 (change 171, January 1, 1980) of Volume 2 of the JTR. See also, Dr. Kenneth J. Bart, 58 Comp. Gen. 710 (1979).

More recently in a decision addressed to the Department of the Interior concerning the inadvertent use of travel agents, 59 Comp. Gen. 433 (1980), we discussed in depth the specific guidance available as to the use of travel agents with respect to civilian employees of the United States covered by the Federal Travel Regulations. We went on to state as follows:

"More specific guidance as to the use of travel agents is found in the General Services Administration (GSA) transportation audit regulations, specifically, 41 CFR 101-41.203.1(a), which states that transportation services whether procured by the use of cash, the Government Transportation Request or otherwise, generally must be procured direct from carriers and that travel agencies may be used only to the extent permitted by the regulations of the General Accounting Office (GAO) (4 CFR 52.3) or GAO's specific exemption therefrom. Our regulations prohibit the use of travel agencies within North America, from the United States or its possessions to foreign countries, and between the United States and its possessions, and between and within its possession. 4 CFR 52.3(a). However, both the GSA and GAO regulations are addressed to Federal agencies generally, not specifically to individual Government travelers, whose travel procedures are found in the FTR or the JTR. Therefore, we are not prepared to say individual travelers on official Government business can be charged with notice of these provisions." (Emphasis added.)

Thus, we concluded that the principle set out in our decisions in B-103315, supra, and 58 Comp. Gen. 710, supra, was appropriately applied in reaching the following result:

"* * * A Government employee, unaware of the general prohibition against the use of travel agents, who inadvertently purchases transportation with personal funds from a travel agent, may be paid for travel costs which would have been properly chargeable had the requested service been obtained by the traveler directly from the carrier."

In applying the rationale set out above we believe there are clear requirements that a traveler must demonstrate for purposes of claiming reimbursement under the exception contained in paragraph C2207-4 of Volume 2, JTR, to the general prohibition against the use of travel agents: First, that he was unaware of the general prohibition; and secondly, that in consequence of that ignorance the traveler's use of the travel agent was "inadvertent" - a word commonly defined through reference to "a lack of intent." Moreover, we believe that it is equally necessary that the traveler's qualification under the exception to the general prohibition against the use of travel agents must - in the circumstances of each case - be reasonable. Specifically, with reference to our analysis in the Department of the Interior case discussed above, the standard of reasonableness is evidenced when individual travelers on official Government business do not know and do not have sufficient reason to know of the applicable regulatory provisions precluding use of travel agents.

With this understanding we turn now to the facts of Mr. Ward's case. As we have indicated, the use of travel agents to secure passenger transportation within the United States has been prohibited under paragraph C2207 of Volume 2 of the JTR since 1976. Effective January 1, 1980, paragraph C2207-4 of Volume 2 of the JTR has provided for reimbursement for the purchase of transportation with personal funds from a travel agent to the extent stated and under the following policy guidelines:

"Except as provided herein, it is the policy of the Department of Defense that transportation for official Government travel will be purchased directly from the carrier. If an employee is not aware of this policy and purchases transportation for official policy travel with personal funds from a

travel agent, that employee will be reimbursed the amount paid not to exceed the cost which would have been incurred if the transportation had been purchased directly from the carrier. In such cases, the employee will be advised that recurrence of such use of travel agents will result in denial of any reimbursement for the transportation so procured unless it can be demonstrated that the employee had no alternative (MS Comp. Gen. B-103315, 1 August 1978)." (Emphasis added.)

In marked contrast to the provisions of paragraph C2207 of Volume 2 of the JTR, Mr. Ward's claim submission to the agency states in part as follows:

"2. In order to perform my duties I am required to travel frequently. I average over 14 trips a year. Each trip is approximately 1 week in duration with about 3 different TDY points in as many different locations. Since my travel is so extensive I have used the services of a travel agent, without incident, for over a year. Utilizing travel agencies have benefited the Government in several ways including:

* * * * *

"3. The travel agency was queried about the discrepancy in price. They were unaware of a Government discount and after investigating found out that it only applied when tickets were purchased with a GTR [Government Transportation Request]. Therefore the discount is only available through SATO [the agency]. They assured me that this was a very unusual circumstance and that in the future they would ensure no government discounts are available before issuing tickets."

This Office has consistently stated that the non-use of travel agencies is premised on the determination that procurement directly from the carriers is more efficient and economical than purchases from the travel agencies. In the circumstances of Mr. Ward's

case the conclusion is inescapable that had he coordinated his travel through his agency and dealt directly with the airlines the mistake would have been avoided and the available discount savings to the Government would have been realized.

Thus, we conclude that for the uninitiated and infrequent Government traveler who inadvertently purchases transportation with personal funds from a travel agent, the provisions of paragraph C2207-4 of Volume 2, JTR, afford relief through an exception to the preclusive provisions on a one time basis - recurrence of such use of travel agents resulting in the denial of any reimbursement for transportation so procured. However, for the experienced and frequent Government traveler it is not presumptively reasonable for him to consistently fail to take notice of his agency's travel policy and implementing regulations. And, where such a traveler's consistent actions amount to a violation of a clearly proscribed course of conduct in using travel agents, the exception represented by paragraph C2207-4 of the regulations is not available because the twin contentions of ignorance and inadvertence are patently unreasonable.

Therefore, in the circumstances of Mr. Ward's case we find that he had or should have had notice of the prohibition provisions of paragraph C2207 of Volume 2, JTR, and that his intentional use of the travel agency to purchase the passenger transportation in question was contrary to those binding provisions and not subject to the relief permitted by the one-time exception provided in paragraph C2207-4 of the regulations. As a result, Mr. Ward's claim for reimbursement for the round-trip travel in question was properly subject to denial in total by the agency.

However, since this definitive analysis extends our construction set out in 59 Comp. Gen. 433, supra, and post-dates the travel which Mr. Ward performed in July 1980, and with consideration for the fact that the travel performed benefited the Government in the amount already reimbursed to Mr. Ward, we will not object to Mr. Ward's retention of that amount of \$416. But, in accordance with our decision here, we are sustaining our Claims Group's disallowance of Mr. Ward's claim for amounts paid to a travel agent for round-trip air travel in excess of the cost which would have

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been incurred if the transportation had been purchased directly from the carrier.

Milton J. Aroslan

Acting Comptroller General
of the United States