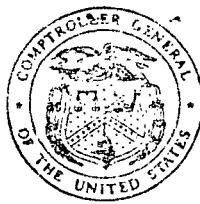


**DECISION**

21654 Metall  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-205402

DATE: April 27, 1982

MATTER OF: William B. Johnston

**DIGEST:** Employee on authorized official travel from Washington, D.C., to Oslo, Norway, and return undertook indirect travel as a matter of personal convenience and traveled by foreign air carrier from London, England, to Oslo. In accordance with the penalty formula set forth at 56 Comp. Gen. 209 (1977), employee is liable for the amount by which his personal travel diverted revenue from United States air carriers to foreign air carriers.

The Nuclear Regulatory Commission requests our decision on whether an employee may be reimbursed for a penalty assessed for the use of a foreign air carrier in violation of the International Air Transportation Fair Competitive Practice Act, the so-called Fly America Act, 49 U.S.C. § 1517. Payment is not authorized since travel as originally scheduled, using United States air carriers to the maximum extent possible, was changed by the authorizing official at the employee's request after he had been informed that he would be assessed a penalty for using a foreign air carrier as a personal convenience.

Mr. William B. Johnston was authorized to perform travel from Washington, D.C., on official business as chairman of a group meeting in Hanko, Norway, from June 15 through June 18, 1981. The meeting dates were established in December 1980. Mr. Johnston later discovered that his daughter's high school graduation ceremony was scheduled for 3 p.m., June 14, 1981, the day that he was expected to begin travel.

The authorizing official planned Mr. Johnston's flights using American air carriers to the maximum extent possible, in accordance with the Fly America Act. The flight selected was Northwest Airlines flight #36 departing JFK International Airport for Oslo, Norway, at 7:10 p.m., June 14, 1981. Due to the conflict presented by his daughter's graduation, Mr. Johnston did not use the direct flight selected by the authorizing official. He used Pan American flight #102 to London, England, departing JFK International Airport at 8:45 p.m., June 14, 1981. A foreign air carrier was used from London to Oslo. When Mr. Johnston asked for this

02-1876  
118230

change in air travel he was informed by the authorizing official that the flights would be scheduled as he requested, but that he would be assessed a penalty since his use of a foreign air carrier was for personal convenience.

The authorizing official considered Mr. Johnston available to begin travel in sufficient time to use the direct American air carrier, relying on Matter of Young, B-192522, January 30, 1979, in which we held that permitting scheduling based on an employee's determining when he is available to and should begin his journey would be tantamount to a license for the employee to accommodate his preference and convenience-- considerations which do not justify the use of foreign air carriers.

Mr. Johnston in support of his claim contends that he was not available to begin travel until after his daughter's graduation ceremony which was expected to conclude at approximately 5 p.m. Mr. Johnston further states that since the earliest flight he could have used after the graduation ceremony was Pan American flight #24 departing National Airport, Washington, D.C., at 6:40 p.m., he would not have been able to reach JFK International Airport in time to catch the direct American air carrier flight to Oslo at 7:10 p.m., on June 14, 1981. He questions whether there is sufficient flexibility in the Fly America Act to allow exemptions for what are essentially once in a lifetime situations for the traveler and if the penalty in this situation can be waived. He notes our decision at 59 Comp. Gen. 66 (1979), which involved an individual who could not travel on certain days because of his religious beliefs, and indicates the result in that case should be applicable to his situation.

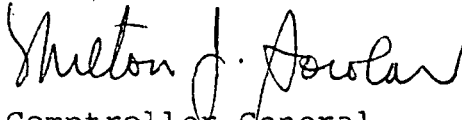
The Fly America Act makes mandatory the use of certificated U.S. air carriers for international air travel paid for from appropriated funds if service by such carriers is available, and imposes a nondiscretionary duty on the Comptroller General to disallow expenditures from appropriated funds for such travel by foreign air carriers in the absence of satisfactory proof of the necessity therefor. The revised implementing guidelines, B-138942, issued March 31, 1981, clearly provide that neither considerations of cost nor the preferences or convenience of the traveler will justify the use of foreign air carriers.

Because the requirement for the use of certified U.S. air carriers is imposed directly by statute all persons are charged with knowledge of it. Matter of Benton, B-188968, August 8, 1977. Consequently the traveler is personally liable for any costs incurred because of his failure to comply with this requirement. Matter of Young, B-192522, January 30, 1979.

In 59 Comp. Gen. 66 (1979), we concluded that it was properly within the agency's authority to determine that the use of a U.S. carrier did not meet the needs of the agency's mission, where an individual of the Jewish faith could not travel on the Sabbath.

While we can appreciate Mr. Johnston's feelings about his daughter's graduation, we do not view his attendance of the ceremony as comparable to that of an individual who cannot travel because of religious convictions. We must view his attendance at the graduation as a matter of personal preference which would not justify a conclusion by his agency that the use of a U.S. carrier would not meet the needs of the agency's mission. Accordingly, we find that he was correctly assessed a penalty for his travel by foreign air carrier. See 56 Comp. Gen. 209 (1977). Mr. Johnston's claim for the amount of that penalty is therefore denied.

As to Mr. Johnston'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. Johnston's request for waiver is denied.

for   
Comptroller General  
of the United States