DECISION

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

FILE: B-210132 DATE: June 24, 1983

MATTER OF: Fly America Act Penalty for Involuntary Re-routing

DIGEST: En route home from temporary duty overseas an employee indirectly routed his travel to take annual leave in Dublin and scheduled his return flight from Shannon to the United States on a U.S. air carrier. Upon arrival in Shannon the employee was informed that his scheduled flight had been discontinued and the carrier scheduled the employee's transoceanic travel on a foreign air carrier. Since there were no alternative schedules at that point under which the employee could have traveled on U.S. air carriers available under the Comptroller General's "Guidelines for Implementation of the Fly America Act" for the transoceanic portion of his travel, there need be no penalty for the use of a foreign air carrier.

The General Counsel of the Central Intelligence Agency has asked whether an employee must be assessed a penalty under the Fly America Act, 49 U.S.C. § 1517, when the U.S. air carrier flight on which he had scheduled his return to the United States from a point along an indirect route was discontinued and the U.S. air carrier rescheduled the employee's transoceanic travel on a foreign air carrier. The penalty is not applied where the employee originally planned his indirect or delayed travel by U.S. air carriers, but at the time he was to use that planned travel the U.S. air carrier was not available and no alternative schedule was available for travel on U.S. air carriers under the Comptroller General's "Guidelines for Implementation of the Fly America Act," B-138942, revised March 31, 1981.

The employee who was returning from temporary duty overseas arranged to return to the United States through Dublin, Ireland, with a period of leave, rather than returning directly. The employee had confirmed reservations from Shannon, Ireland, to Boston to Washington on U.S. air carriers, but when he arrived in Shannon on the Wednesday his flight was scheduled to depart, he was

informed that the flight had been discontinued several weeks earlier and that the next flight by an American carrier was not until that Saturday. The ticket agent for the U.S. air carrier rewrote the employee's return ticket and placed him on the next direct flight to the United States aboard a foreign air carrier to New York. The employee completed his return from New York to Washington on a U.S. air carrier. If the employee had not interrupted his official travel for a period of annual leave in Dublin, his travel to Washington, D.C., would have been performed by U.S. air carrier.

The General Counsel is aware of our decisions involving indirect travel which hold the employee financially responsible to the extent his personal travel results in a reduction in receipt of Government revenues by U.S. air carriers over revenues they would have earned had the employee performed only authorized travel. Matter of Keller, B-200279, November 16, 1981; Matter of Griffis, B-188648, November 18, 1977. However, the General Counsel believes that an employee should not be penalized when a U.S. air carrier involuntarily re-routes the employee and frustrates scheduling arrangements that would not have involved a loss of revenues by U.S. air carriers. In general, we agree that an employee should not suffer a financial loss when a U.S. air carrier frustrates previously made scheduling arrangements that would not have required assessment of a penalty. Derived from our earlier holding to that effect in Matter of Norberg, 59 Comp. Gen. 223 (1980), paragraph 3 of the Comptroller General's "Guidelines for Implementation of the Fly America Act," B-138942, revised March 31, 1981, provides in pertinent part:

> "3. Except as provided in paragraph 1, U.S. air carrier service must be used for all Government-financed commercial foreign air travel if service provided by such carriers is available. In determining availability of a U.S. air carrier the following scheduling principles should be followed unless their application results in the last or first leg of travel to or from the United States being performed by foreign air carrier:

* * * * *

"(c) where a U.S. air carrier involuntarily reroutes the traveler via a foreign carrier, the foreign air carrier may be used notwithstanding the availabiity of alternative U.S. air carrier service."

Because an employee's obligation under the Fly America Act is essentially one of proper scheduling, we agree that subparagraph 3(c) should apply to indirect as well as direct travel where the employee's scheduling would otherwise be frustrated through no fault of his own. However, because the travel here in question involved the last leg of a trip to the United States, subparagraph 3(c) is not dispositive of the issue raised in this particular case.

The guidelines and our decisions place a higher degree of responsibility on the employee to schedule travel to and from the United States aboard U.S. air carriers. See, e.g., 55 Comp. Gen. 1230, 1233 (1976). For such travel, a foreign air carrier may be used only when U.S. air carrier service is otherwise unavailable under the guidelines. Insofar as applicable to transoceanic travel originating abroad, paragraph 4 of the guidelines provides:

"4. For travel between a gateway airport in the United States (* * * the first U.S. airport at which the traveler's flight arrives) and a gateway airport abroad (that airport from which the traveler last embarks en route to the U.S. * * *), passenger service by U.S. air carrier will not be considered available:

"(a) where the gateway airport abroad is the traveler's origin * * * airport, if the use of U.S. air carrier service would extend the time in a travel status, including delay at origin * * * by at least

> 24 hours more than travel by foreign air carrier.
>
> "(b) where the gateway airport abroad is an interchange point, if the use of U.S. air carrier service would require the traveler to wait 6 hours or more to make connections at that point, or if * * * accelerated arrival at the gateway airport in the United States would extend his time in a travel status by at least 6 hours more than travel by foreign air carrier."

If the employee in this case had been on official business rather than annual leave while in Dublin he would have been obliged, upon learning that his flight had been discontinued, to travel by U.S. air carrier insofar as such service met the availability criteria set forth above. We see no reason to expect less of an employee who indirectly routes his travel, even though he may be in a leave status and personally responsible for subsistence expenses incurred during the period of delay. Therefore, we will apply the Fly America Act guidelines in determining liability for travel on an indirect route where a U.S. air carrier on which the employee has scheduled his travel discontinues or cancels that flight.

In this case, we find that U.S. air carrier service was unavailable and that the employee properly proceeded by foreign air carrier between Shannon and New York. Since there was no U.S. air carrier departing from Shannon to Boston or any other usual interchange point en route to Washington, D.C., within 24 hours of the foreign air carrier's departure time, U.S. air carrier service was unavailable at that gateway airport under subparagraph 4(a). However, the employee's duty of proper scheduling under subparagraph 3(b) of the guidelines required him to consider routings using foreign air carrier service from Shannon to "* * * the nearest interchange point on a usually traveled route to connect with U.S. air carrier service * * *" to the United States. That interchange point was London. Airline schedules show that an individual arriving at the Shannon airport to board a scheduled 3:05 p.m. flight would have had to

stay overnight in London in order to make connections with a U.S. air carrier there. Under this scheduling London becomes the gateway airport. Since London would have been an interchange point rather than the traveler's origin airport, availability of U.S. air carrier service from London to the United States would be determined under subparagraph 4(b) quoted above. Since the wait in London was over 6 hours, U.S. air carrier would have been considered unavailable under subparagraph 4(b) and the employee would have been permitted to proceed by foreign air carrier from London to the United States without penalty.

Since there were no U.S. air carriers available under our guidelines for travel to the United States from Shannon, the employee is not subject to a penalty for proceeding by foreign air carrier.

for Milton J. Socolar
Comptroller General
of the United States