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DECISION



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

FILE: B-219850

DATE: February 19, 1986

MATTER OF: Sergeant Jeffry A. Collins, USAF

DIGEST: Statement by a service member that U.S. air carrier serving Okinawa was overbooked and, therefore, unavailable does not provide adequate justification for his travel by foreign air carrier from California to Honolulu, and from there to Tokyo, en route to Okinawa. Adequacy of justification is to be determined in accordance with the Fly America Act standards of unavailability set forth in Joint Travel Regulations, vol. 1, para. M2150. When a U.S. air carrier cannot provide through service between origin and destination, these standards require the member to use U.S. air carrier service available at point of origin to the farthest practicable interchange point on a usually traveled route.

Sergeant Jeffry A. Collins appeals our Claims Group's denial of reimbursement for his and his family's overseas travel on a foreign air carrier incident to a permanent change of station from Beale Air Force Base, California, to Kadena Air Base in Okinawa, Japan. With his appeal Sergeant Collins has submitted a statement justifying his use of a foreign air carrier on the basis that the only U.S. air carrier serving Okinawa was unavailable because of overbookings and flight cutbacks. Because it does not address the availability of U.S. air carrier service for travel to interchange points en route to Okinawa, the statement does not provide an adequate justification for his and his family's travel by foreign air carrier.

Background

For the purpose of performing change-of-station travel, Sergeant Collins was authorized Government air transportation from California to Kadena Air Base in Okinawa, Japan. Instead, he elected to use commercial air transportation in order to travel by way of Honolulu, Hawaii, where he took leave. This election was approved in an amendment to his travel orders, and Sergeant Collins was advised that his

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reimbursement would be limited to the lower-than-commercial cost of air transportation provided by the Military Airlift Command. After taking leave in Honolulu, Sergeant Collins proceeded to Tokyo, Japan, then to Okinawa with his family. He arrived at his new duty station on November 29, 1980.

Sergeant Collins used a travel agent to purchase the airline tickets. The agent scheduled all three legs of the family's travel aboard a foreign air carrier. Sergeant Collins has indicated that the transportation office at his old duty station was aware of his travel arrangements, but did nothing to inform him of any limitation on the use of foreign air carriers. Sergeant Collins was denied reimbursement by the Air Force for his and his family's air transportation costs because he had not provided a justification for the use of a foreign air carrier. Our Claims Group denied reimbursement on the same basis. Sergeant Collins has now furnished a statement in which he sets forth the following justification:

"* * * [The travel agent] * * * informed me that Japan Air Lines was the only carrier available to satisfy my NLT date of 30 November 1980. The only American Airline serving Okinawa, Northwest Orient, was not available because of over-bookings due to cut-back in flights. They further stated of the difficulties in manifesting us on Japan Air Lines because all airlines were cutting back flights caused by the Airline fuel shortage of that time, added to this it was the holiday season."

Analysis and Conclusion

The Fly America Act, 49 U.S.C. App. § 1517, prohibits the expenditure of appropriated funds for Government-financed air transportation on a foreign air carrier unless U.S. air carriers are unavailable. The Comptroller General is required by that act to disallow any expenditure for travel by a foreign air carrier in the absence of satisfactory proof of necessity therefor. General William Coleman, USAF, et al., B-206723, October 21, 1982. At the time of Sergeant Collins' travel, the Fly America Act was implemented by the services in Joint Travel Regulations, vol. 1, para. M2150 (Change No. 325, March 1, 1980), which set forth

the requirement to use U.S. air carriers. Under 1 JTR para. M2152 (Change No. 325, March 1, 1980), each voucher for reimbursement of expenses for travel in whole or in part by foreign air carriers is required to be supported by a certificate or memorandum setting forth the justification for use of a foreign air carrier. The statement which Sergeant Collins has now provided is submitted pursuant to this requirement. It is the sufficiency of that statement which is here in issue.

In a case similar to Sergeant Collins', an employee of the Department of Defense relied on a travel agent to make arrangements for his travel from Kansas to Nuernberg, Germany. The employee traveled by foreign air carrier and furnished a justification certificate based on information he received from the travel agent that U.S. air carriers were unavailable. After noting it was possible to make flight connections to Nuernberg from more than two dozen European cities and that U.S. air carriers offered service between many of those cities and the United States, the Comptroller General held that the employee's unsubstantiated justification certificate was not in itself sufficient to authorize reimbursement for the use of a foreign air carrier. John King, Jr., 62 Comp. Gen. 278 (1983). Accord, General William Coleman, USAF, et al., B-206723, supra.

In addressing the adequacy of the employee's offered justification in John King, Jr., 62 Comp. Gen. 278, we pointed out that the Comptroller General's decisions and guidelines require a determination by a transportation or other appropriate officer that U.S. air carrier service was unavailable. For members of the military services, this requirement is reflected in 1 JTR para. M2150-4. The determination of unavailability is required to be made in accordance with the standards set forth in 1 JTR para. M2150. For a case such as Sergeant Collins' where U.S. air carriers cannot offer through service between the origin and destination, 1 JTR para. M2150-5 requires that the traveler use U.S. air carrier service available at origin to the farthest practicable interchange point on a usually traveled route. Sergeant Collins does not claim that U.S. air carrier service was unavailable for travel between California and Tokyo, a usual interchange point en route to Okinawa. Nor does he claim that U.S. air carrier service was unavailable for the travel he actually performed from California to

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Honolulu, or from Honolulu to Tokyo. His statement is addressed only to the availability of U.S. air carrier service arriving in Okinawa and would appear to be limited to the availability of U.S. air carrier flights between Tokyo and Okinawa.

In the absence of an appropriate justification, Sergeant Collins' contention that Air Force transportation officers knew his travel plans but failed to caution him about the use of foreign air carriers does not provide a basis to allow his claim. A Government traveler is deemed to be on notice of the requirements of 49 U.S.C. App. § 1517 and regulations implementing the Fly America Act. Colonel Nicholas S. Kotas, B-194229, August 5, 1980, and Arnold J. Jacobius, B-186007, November 15, 1976. Since the Government cannot be bound by the erroneous acts of its agents, even when committed in the performance of their official duties, even an affirmative misrepresentation by a Government transportation officer as to the effect of travel by foreign air carrier does not provide a basis to reimburse an employee whose travel violates the Fly America Act.

Because we find that Sergeant Collins has not furnished a sufficient justification for travel by foreign air carrier between California and Okinawa, his claim for reimbursement for the airfare he paid for his and his family's travel may not be paid. We note, however, that Sergeant Collins has not submitted any statement of justification to the Air Force. Insofar as the statement he has furnished this Office sets forth an appropriate basis for travel by foreign air carrier between Tokyo and Okinawa, Sergeant Collins should resubmit his voucher, together with this statement, to the Air Force for a determination of unavailability as required by 1 JTR para. M2150-4. Provided a determination is made that U.S. air carrier service was unavailable for that leg of the trip, Sergeant Collins' liability for use of foreign air carrier service should be recomputed on the basis of the formula set forth in 56 Comp. Gen. 209 (1977).

Milton J. Arnold
for Comptroller General
of the United States