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DECISION



THE COMPTROLLER GENERAL GAO  
OF THE UNITED STATES 00412  
WASHINGTON, D.C. 20548

FILE: B-193620

DATE: January 10, 1979

MATTER OF: Second Lieutenant Fabio F. Fiore, USAFR

(PIN)

[Disallowance of Reimbursement for Travel on Foreign Flag Air Carrier]

DIGEST: ① Travel performed on a foreign air carrier by an ~~Air Force member~~ is not authorized at Government expense where air carriers of United States registry were available in the absence of a sufficient showing of the necessity for use of a foreign air carrier, ~~as required by 49 U.S.C. 1517 (Supp. V, 1975)~~. Assertion by the member that flights on U.S. airlines on the day of desired travel were full is not a sufficient showing of the necessity for the use of a foreign flag carrier.

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This action is in response to a letter dated September 15, 1978, from Second Lieutenant Fabio F. Fiore, USAFR, 216 62 3418, appealing a settlement by the Claims Division of this Office dated August 25, 1978, which partially disallowed his claim for personal travel allowance incident to his release from active duty in the Air Force.

The member was authorized to perform an annual tour of active duty during the period of May 26 to July 9, 1977. He was directed to report to the New York University School of Medicine, New York, New York, and Brooks Air Force Base, Texas. After his release at the end of the tour on July 8, 1977, he was authorized to be returned to Rome, Italy, his home of record.

In the August 25, 1978 settlement the Claims Division disallowed the claim for the cost of air travel between New York City and Rome because the travel was performed on a foreign flag carrier and the applicable regulations prohibited reimbursement for such travel, except when United States carriers are unavailable or their use is impractical. In his appeal the member asserts that according to Pan American and Trans World Airlines personnel (the United States certificated carriers serving Rome) at the ticket counters in John F. Kennedy Airport, New York, no seats were available for him on the evening of July 12, 1977, to travel from New York to Rome. The member then bought passage on Air India Flight AI-104.

The controlling statutory provision concerning transportation of Government-financed passengers ("Fly America Act") is found in

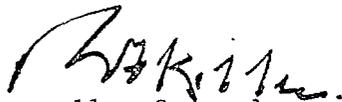
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49 U.S.C. 1517 (Supp. V, 1975). That statute provides that the Comptroller General of the United States shall disallow any expenditure from appropriated funds for transportation on a foreign air carrier in the absence of satisfactory proof of the necessity therefor. See also 4 C.F.R. Part 52 (1978). Implementing regulations applicable to the uniformed services are found in Volume 1 of the Joint Travel Regulations (1 JTR). Paragraph M4159-4c, 1 JTR, provides that reimbursement may not be authorized for travel at personal expense on aircraft of foreign registry except under conditions specified in chapter 2, Part D. Paragraph M2150-4, chapter 2, Part D, provides that where the transportation or other appropriate officer determines that certificated air carriers are "unavailable," the member may be authorized the use of aircraft of foreign registry. However, paragraph M2150-2 also provides that service by a certificated air carrier is considered "available" even though service by a noncertificated carrier is more convenient for the traveler. An "unavailable" determination may not be based merely on a short delay or similar inconveniences in obtaining transportation by a certificated carrier. See generally 57 Comp. Gen. 519 (1978) and 56 Comp. Gen. 216 (1977). Compare B-188991, July 18, 1977.

The travel of the member in this case was performed on a foreign flag air carrier without a proper showing of unavailability of United States certificated carriers. In the absence of such a showing, the claim for reimbursement for such travel must be denied.

Accordingly, the action taken by the Claims Division disallowing the member's claim for reimbursement for air travel between New York City and Rome is sustained.

  
Deputy Comptroller General  
of the United States