

R. P. I
P. L. I



DECISION

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

8993

FILE: B-192522

DATE: January 30, 1979

MATTER OF: Robert A. Young - Fly America Act - Traveler's Liability

DIGEST: *[Employee in Violation of Fly America Act is Personally Liable For Cost]*

Employee who travels overseas on foreign air carrier when service by certified U.S. carrier sufficient for agency's needs is available in violation of Fly America Act is personally liable for cost. Traveler's preferences or convenience does not determine availability and he may not be relieved of liability because of ignorance of law or because others made travel arrangements. Moreover he has a duty to comply with the Act and he may not defeat its purpose and avoid liability by scheduling travel at his discretion when no constraints are imposed by agency.

Ms. Wilma Hartley, an Authorized Certifying Officer, has requested a decision as to the liability of Mr. Robert A. Young, Comptroller, Defense Property Disposal Service, for the cost of international travel on a foreign air carrier under the provisions of section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, Pub. L. 93-623, January 3, 1975, 88 Stat. (Part 2) 2104 (49 U.S.C. 1517 (Supp. V, 1975)) - more commonly known as the Fly America Act.

Departing on November 3, 1976, Mr. Young flew on official business from Battle Creek, Michigan, to Frankfurt, Germany. Travel from Battle Creek to Europe is usually routed through Detroit, Michigan. However in this instance, apparently at the traveler's request, he was routed through Chicago, Illinois, and was originally scheduled to fly from Battle Creek to Chicago on Air Wisconsin, from Chicago to London, England, on Pan American, and from London to Frankfurt on Lufthansa. The file does not show the originally proposed departure time or that his agency imposed any constraints in this regard, but Mr. Young requested a change in his schedule on that grounds that he did not want to leave until late afternoon so that he could spend a complete day at his duty station. He also indicated that he preferred not to go through JFK in New York City. His reservations were changed accordingly and his voucher indicates that he actually departed Battle Creek at 4:00 p.m. on the third and flew to Chicago on Air Wisconsin. From Chicago he flew on Lufthansa to Frankfurt, arriving at 12:55 p.m. on the fourth.

~~43372~~

dec

The file indicates that by advancing his departure time about 3 hours and by traveling through Detroit or JFK, Mr. Young could have made the entire trip without using foreign air carriers. Moreover, it appears that even by the route he actually took he could have spent a complete day at his duty station and still have traveled most of the way on certificated U.S. carriers merely by delaying his departure about 2 hours. Flights were scheduled to depart Battle Creek at 6:05 p.m. and arrive at Chicago at 6:00 p.m., to depart Chicago on TWA at 7:30 p.m. and arrive at London at 9:00 a.m. on the following day, and to depart London on Alitalia at 10:15 a.m. and arrive at Frankfurt at 2:45 p.m.

Mr. Young was originally scheduled to depart Frankfurt for his return trip on November 14, 1976, and fly to London on Lufthansa, from London to Detroit on Pan American, and from Detroit to Kalamazoo, Michigan, on North Central. However he was delayed by official business until noon on November 17, 1976, and his reservations were changed so that, according to his voucher, he actually departed at 1:00 p.m. on that date and flew direct from Frankfurt to Chicago on Lufthansa and from Chicago to Battle Creek on Air Wisconsin, arriving at 6:40 p.m.

Mr. Young states that on November 17, 1976, when he effected his transfer of flight from Pan American to Lufthansa he was informed by a Pan American representative that there were no flights by certificated U.S. carriers until the next morning. He also states in his justification for the use of a foreign air carrier that the only flights available for the remainder of the day were to Chicago or to Detroit via Toronto, Canada, and that it was "more cost effective" to fly direct to Chicago. In fact, it would appear that the return trip could have been accomplished entirely by U.S. airlines merely by scheduling departure about an hour later. There was a Pan American flight scheduled to depart Frankfurt at 1:55 p.m. and arrive at JFK at 4:20 p.m., a United flight scheduled to depart JFK at 7:00 p.m. and arrive at Chicago at 8:30 p.m., a flight scheduled to depart Chicago at 9:50 p.m. and arrive at Battle Creek at 11:50 p.m.

The file indicates that there were also other U.S. carrier flights in both directions which could have served most if not all of Mr. Young's agency's official needs. When questions were raised concerning the propriety of this travel, he replied in substance that arrangements for it were made not by him but by travel personnel of his agency and the Air Force, that the only limitation he

B-192522

requested was that he not be routed through JFK, and that he was not aware of all the details of the requirements for the use of certificated U.S. carriers.

The aforementioned Fly America Act (a) 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 (b) 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 implementing guidelines, B-138942, issued March 12, 1976, and published April 8, 1976, 41 FR 14946, clearly provide that neither considerations of cost nor the preferences or convenience of the traveler will justify the use of foreign air carriers. The inconvenience resulting from routing through JFK has been specifically held not to constitute such justification. Matter of Joint Chief of Staff, B-138942, June 5, 1978.

Moreover, 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 Catherine 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 and he is not relieved of this responsibility merely because he relied upon the advice or assistance of others in arranging his travel. See B-189711, January 27, 1978.

A related matter, the timing of travel to comply with the requirements of the Fly America Act, is discussed in 56 Comp. Gen. 216 (1977) and B-189711, supra. Suffice it to say here that this is primarily a matter to be decided by the employing agency based on its needs and its determination as to when the employee is available for travel. However, the traveler has a duty to comply with the Act and it would be completely inconsistent with its tenor to permit an employee to defeat its purpose and avoid liability by scheduling travel on the basis of his own determination as to when he is available to and should begin his journey. Permitting scheduling on this basis would be tantamount to a license for the employee to accommodate his preferences and convenience - considerations which do not justify the use of foreign air carriers, as has been previously indicated.

B-192522

Accordingly, appropriated funds may not be used to pay the costs of Mr. Young's travel by foreign air carrier from Chicago to Frankfurt and from Frankfurt to Chicago since there is no satisfactory proof of the necessity therefore, and he is personally liable for such costs.


Deputy Comptroller General
of the United States