

DOCUMENT RESUME

02273 - [A1332290]

[Fly America Act Violation in Connection with Employee Travel to Conference]. B-187506. May 5, 1977. 6 pp.

Decision re: Alvin G. Edgell; by Paul G. Deabling (for Elmer B. Staats, Comptroller General).

Issue Area: Personnel Management and Compensation: Compensation (305); Transportation Systems and Policies (2400).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805); Commerce and Transportation: Air Transportation (405).

Organization Concerned: ACTION: Peace Corps.

Authority: International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517); B-130942 (1975). 55 Comp. Gen. 1230.

James E. Allen, certifying officer of ACTION, requested a decision regarding payments for an employee's travel aboard foreign air carriers to attend a conference. Requirements for use of U.S. air carriers were not found to be violated in portion of travel where travel time would have been doubled by such use, but were violated where such service was practicable.  
(HTR)

2290

02273

Leslie Wilcox  
Civ. Pers.



**DECISION**

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

**FILE: B-187508**

**DATE: May 5, 1977**

**MATTER OF: Alvin G. Edgell - Fly America Act Violation**

- DIGEST:**
1. Employee who traveled direct from Bangkok to Manila aboard a foreign air carrier, with elapsed traveltime of 2 hours, 15 minutes, did not violate 49 U.S.C. § 1517 since alternative routing by certificated U.S. air carrier to Hong Kong and thence by foreign air carrier to Manila involved elapsed traveltime of more than twice 2 hours, 15 minutes. Paragraph 4(d) of the Comptroller General's Guidelines, B-138942, March 12, 1976, provides that certificated service may be considered unavailable when the elapsed traveltime by noncertificated air carrier(s) is 3 hours or less and certificated service would involve twice such scheduled traveltime.
  2. In traveling between Manila and Delhi, employee traveled 1,368 miles by foreign air carrier to Bangkok to connect with a certificated U.S. air carrier to Delhi, whereas he could have traveled 702 miles by foreign carrier to Hong Kong to connect with a certificated carrier on to Delhi. Since the employee was required to take a foreign carrier from Manila to the nearest practicable interchange point on a usually traveled route, he is liable for the \$82.46 loss occasioned certificated U.S. air carriers by his improper use of foreign air carrier service computed in accordance with the formula set forth in B-138942, January 3, 1977, 56 Comp. Gen. \_\_\_.

This action is in response to a request dated September 21, 1976, by James E. Allen, an authorized certifying officer of the Agency for Action, for a decision regarding travel aboard foreign air carriers by Mr. Alvin G. Edgell, an employee of the Peace Corps. At the time of the travel in question, Mr. Edgell was permanently stationed in Kabul, Afghanistan. He was directed to travel

B-187508

from there to Manila, Philippine Republic, to attend a conference beginning August 24, 1975, and ending August 31, 1975.

For reasons related to the purpose of the conference, Mr. Edgell departed Kabul on August 19, 1975, and traveled first to Bangkok, Thailand, where he remained until August 23, 1975. That portion of his travel from Kabul to Bangkok was accomplished on foreign air carriers, all of which travel ACTION has determined to have been proper based on the unavailability of certificated U. S. air carrier service. Similarly, certificated service was unavailable for the portion of his return travel between Delhi, India, and Kabul. The certifying officer, however, raises questions concerning Mr. Edgell's use of foreign air carriers to travel from Bangkok to Manila on August 23, 1975, and for return travel between Manila and Bangkok on September 3, 1975.

In traveling to the conference, Mr. Edgell departed from Bangkok at 8:05 a.m. on August 23, 1975, aboard a foreign air carrier and arrived at noon in Manila. The airline schedules show that he could have traveled from Bangkok to Hong Kong aboard a Pan American flight departing at 12:10 p.m. on August 23, 1975, and arriving at 6 p.m., with connections aboard a foreign air carrier departing Hong Kong at 9:30 p.m. and arriving in Manila at 10:15 p.m. that same day. Mr. Edgell has been disallowed the air fare attributable to his excessive use of foreign air carriers between Bangkok and Manila and has reclaimed the amount disallowed. The certifying officer is in doubt as to whether the reclaimed amount may be paid.

Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, 49 U. S. C. § 1517, requires that Government financed commercial foreign air travel be performed by certificated U. S. air carriers to the extent such service is available. At the time of Mr. Edgell's travel, that provision of law was implemented by the Comptroller General's Guidelines, B-138942, issued June 17, 1975. Those Guidelines provide that considerations of convenience, preference and cost, as well as availability of foreign excess currencies, are not relevant to the determination of whether certificated service is available and set forth three sets of circumstances under which certificated U. S. air carrier service may be regarded as unavailable. On March 12, 1976, the Guidelines were amended to add a fourth condition of unavailability. Insofar as pertinent here, section 4(d) now provides:

B-187506

"4. Passenger service by a certificated air carrier will be considered to be 'unavailable'

\* \* \* \* \*

"(d) when the elapsed traveltime on a scheduled flight from origin to destination airports by noncertificated air carrier(s) is 3 hours or less, and service by certificated air carrier(s) would involve twice such scheduled traveltime."

While subparagraph 4(d) was included in the Guidelines subsequent to Mr. Edgell's travel, the standard of unavailability of certificated air carrier service that it enunciates may be applied to travel predating the March 12, 1976, amendment to the Guidelines.

Because of Mr. Edgell's stay in Bangkok, his travel from there to Manila may be regarded as a single trip for purposes of applying the unavailability criteria set forth in the Guidelines. Considering the time zone changes, the scheduled elapsed traveltime between Bangkok and Manila aboard the foreign carrier used by Mr. Edgell was 2 hours, 15 minutes. The scheduled elapsed traveltime using a certificated U. S. air carrier between Bangkok and Hong Kong and thence to Manila via a foreign air carrier is 9 hours, 5 minutes. Since the elapsed traveltime of 2 hours, 15 minutes by direct foreign air carrier is less than 3 hours, and since the elapsed traveltime via the alternative routing set forth above is more than 4 hours, 30 minutes (twice the direct foreign carrier traveltime), Mr. Edgell properly traveled by direct route on a foreign air carrier between Bangkok and Manila. Under the circumstances, certificated U. S. air carrier service may be considered unavailable under the principle of subparagraph 4(d) of the Guidelines. Accordingly, the disallowance made for that portion of the trip was incorrect.

In returning from the conference, Mr. Edgell departed Manila at 4:25 p. m. on September 3 aboard a foreign air carrier and arrived in Bangkok at 6:25 p. m., where he transferred to a Pan American flight departing Bangkok at 1:35 a. m. and arriving in Delhi at 3:50 p. m. the next day. The distance flown by foreign

B-187506

air carrier between Manila and Bangkok, as shown in the Official Airline Guide, is 1,368 miles. The distance flown by certificated U. S. air carrier between Bangkok and Delhi is 1,815 miles.

The certifying officer explains that Mr. Edgell could have departed from Manila by foreign air carrier at 5:43 p. m. on September 3 and arrived in Hong Kong at 8:30 p. m. with connections aboard Pan American leaving Hong Kong at 11 p. m. and arriving in Delhi at 3:50 a. m., September 4. The distance between Manila and Hong Kong is 702 miles, while the distance between Hong Kong and Delhi is 2,345 miles. Based on this alternative routing for the portion of his travel between Manila and Delhi, Mr. Edgell has been disallowed the portion of his air fare determined to be attributable to his excessive use of foreign air carriers between Manila and Bangkok and has reclaimed the amount disallowed. The certifying officer is in doubt as to whether the reclaimed amount may properly be paid inasmuch as Mr. Edgell's travel via Bangkok instead of by way of Hong Kong resulted in his using certificated U. S. air carrier service to a lesser extent than he should.

In 55 Comp. Gen. 1230 (1976) we held that where certificated U. S. air carrier service is available at point of origin the traveler should select from among those schedules by way of usually traveled routes the schedule making the greatest use of certificated service. With respect to cases such as Mr. Edgell's, where the point of origin is not served by a certificated carrier, we held that the traveler should proceed by noncertificated carrier from point of origin to the nearest practicable interchange point on a usually traveled route to connect with certificated service. Thus, Mr. Edgell was required to take a foreign carrier from Manila to Hong Kong, the nearest practicable interchange point on a usually traveled route to Kabul via Delhi. We therefore affirm the administrative determination that Mr. Edgell made excessive use of foreign carrier service incident to his return from Manila to Kabul.

Under 49 U. S. C. § 1517 this Office is required to disallow any expenditures from appropriated funds for payment of transportation on a noncertificated air carrier in the absence of satisfactory proof of the necessity therefor. The formula to be used

B-187506

in computing the amount of the required disallowance of payment is set forth in B-138942, January 3, 1977, 56 Comp. Gen. \_\_\_, as follows:

|   |   |                               |
|---|---|-------------------------------|
| Sum of certificated carrier segment<br>mileage authorized | X | Fare payable<br>by Government |
| <u>Sum of all segment mileage authorized</u>              |   |                               |

MINUS

|   |   |                     |
|---|---|---------------------|
| Sum of certificated carrier segment<br>mileage traveled | X | Throughfare<br>paid |
| <u>Sum of all segment mileage traveled</u>              |   |                     |

The above proration formula measures the loss of revenues by certificated U. S. air carriers attributable to the employee's improper use of foreign air carrier service.

In Mr. Edgell's case, both the fare payable by the Government and the throughfare paid are \$1,085. The mileage distances necessary to the calculation are as follows:

| <u>Authorized Travel</u>                     |            | <u>Actual Travel</u>                       |            |
|--|------------|--|------------|
| Kabul to Delhi.....                          | 623        | Kabul to Delhi.....                        | 623        |
| Delhi to Bangkok.....                        | 1,815      | Delhi to Bangkok....                       | 1,815      |
| Bangkok to Manila....                        | 1,368      | Bangkok to Manila...                       | 1,368      |
| Manila to Hong Kong...                       | 702        | Manila to Bangkok...                       | 1,368      |
| *Hong Kong to Delhi....                      | 2,345      | *Bangkok to Delhi....                      | 1,815      |
| Delhi to Kabul.....                          | <u>623</u> | Delhi to Kabul.....                        | <u>623</u> |
| Sum of all segment<br>mileage authorized.... | 7,476      | Sum of all segment<br>mileage traveled.... | 7,612      |

\*Indicates certificated U. S. air carrier service.

Applying the above fare and mileages to the liability formula, the employee should be disallowed \$82.46, calculated as follows:

$$(2,345/7,476) 1,085 - (1,815/7,612) 1,085 = \\ \$340.69 - \$258.23 = \$82.46$$

R-187506

With the exception of that \$82.46 amount, Mr. Edgell's claim for amounts withheld for excessive use of foreign air carrier service should be allowed.

*Paul G. Armstrong*  
For the Comptroller General  
of the United States