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**DECISION**



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

**FILE:** B-202691

**DATE:** December 23, 1981

**MATTER OF:** D. Thomas Longo, Jr. - Fly America Act --  
Travelers' Liability

**DIGEST:** Employees and dependents who travel overseas on foreign air carriers when service by U.S. air carriers is available in violation of Fly America Act are personally liable for costs even though they may have been ignorant of the Act and relied upon erroneous statements of a Government official in charge of travel. Government is not estopped from enforcing valid Congressional requirements for charging the public treasury.

Mr. D. Thomas Longo, Jr., Hungarian Affairs Officer, Department of State, appeals our Claims Division's denial of reimbursement for overseas travel on foreign air carriers. The issue in this case is whether Mr. Longo and his dependents may be reimbursed for travel on foreign air carriers in violation of the Fly America Act because they relied on erroneous advice by the Government official in charge of travel. A Government traveler is not relieved of the responsibility for correctly arranging his and his dependents' travel on U.S. air carriers when such service is available by relying on advice given by others. Reimbursement may not be allowed.

Mr. Longo and his dependents were transferred from Budapest, Hungary, to Washington, D.C., in 1978. For personal reasons, Mr. Longo actually traveled from Budapest through Rome and several other Italian cities to Paris by foreign air carriers. He completed his travel on a U.S. air carrier from Paris to Washington. His dependents' travel was essentially the same, except that they went through Zurich on the way to Rome. Mr. Longo states that these itineraries were cleared with agency and airline officials in Budapest who advised him that the routings were consistent with the requirements of 49 U.S.C. 1517, as amended, commonly called the Fly America Act. When Mr. Longo submitted his travel voucher to the State Department, and later our Claims Division, determined that he and his dependents should have traveled by a routing making proportionally greater use of U.S. air carriers. Under the formula set forth in Foreign Affairs Manual (FAM) Circular No. 730, September 14, 1977, Mr. Longo's liability for travel by foreign air carrier was determined to be \$494.54.

Mr. Longo does not claim that his and his dependents' use of foreign air carriers can be justified as a matter of necessity or based on the unavailability of U.S. air carrier service. Rather, his arguments for reimbursement are based on his receipt of erroneous advice from a Government official in Budapest. He contends that his receipt of erroneous advice; (1) proves that the Fly America Act is too ambiguous to enforce; (2) estops the Government from enforcing it; and (3) amounts to his correctly performing travel.

One Government official's erroneous advice in Budapest does not mean that the Fly America Act is ambiguous. The Act simply states that U.S. air carriers must be used "\* \* \* to the extent service by such carriers is available." That is not ambiguous, and the implementing regulations in Volume 6 of the Foreign Affairs Manual (FAM) and related Circulars further define the concept of U.S. air carrier availability. Paragraph 134.2(b) of 6 FAM in effect at the time of the travel clearly stated: "When the point of origin of travel is outside the United States and American-flag carriers provide service, this service must be used \* \* \*." Since a U.S. air carrier provided service from Budapest through to Washington, Mr. Longo and his dependents were required to use that service rather than the foreign air carriers which were used. To the extent their deviation from that routing resulted in a reduction in U.S. air carrier revenues, the Fly America Act requires that the expenditure for their travel by foreign air carriers be disallowed. 56 Comp. Gen. 209 (1977).

Situations where erroneous advice by a Government official will estop, or prevent, the Government from applying valid laws and regulations, such as the Fly America Act, are rare. The well-established principle that the Government cannot be estopped by the erroneous advice of its employees was recently affirmed by the Supreme Court in Schweiker v. Hansen, 101 S. Ct. 1468 (1981). In that decision the Supreme Court admonished all courts to observe the conditions defined by Congress for charging the public treasury. In Mr. Longo's case one of the conditions for charging the public treasury for his travel is his compliance with the Fly America Act. Mr. Longo's eligibility for reimbursement of his and his dependents' travel expenses is subject to the condition prescribed by Congress in the Fly America Act that they make use of U.S. air carriers where such service is available. We have the same duty as the courts for observing conditions defined by Congress. The Act itself states "The Comptroller General of the United States shall disallow any expenditure from appropriated funds \* \* \*" for any proscribed air transportation. Since the portion of Mr. Longo's and his dependents'

travel that was accomplished on foreign air carriers did not meet the conditions defined by Congress for charging the public treasury, it may not be reimbursed, regardless of Mr. Longo's detrimental reliance on erroneous advice, Schweiker v. Hansen, supra.

We have also considered, but must reject, Mr. Longo's argument that he satisfied his obligation with respect to the Fly America Act and supporting regulations when he verified his itinerary with the appropriate official in his agency. The regulation at 6 FAM 115, states that "The traveler is responsible for the correct performance of official travel \* \* \* regardless of who may have assisted the traveler in making travel arrangements \* \* \*." The FAM is intended to insure that travel is correctly performed -- not merely reasonably planned. And, it makes the traveler financially responsible for charges due to incorrect performance. In the context of the Fly America Act we have specifically recognized that the employee may not be relieved of liability for improper travel by foreign air carrier merely because he relied on the erroneous advice of others. In Jasinder S. Jaspal and Claude A. Goode, B-202599, September 29, 1981, we stated:

"Because the requirement for the use of U.S. air carriers is imposed directly by statute, all persons are charged with knowledge of it. Catherine Benton, B-188968, August 8, 1977. For this reason and because Government funds may not be used to pay for unnecessary travel by foreign air carrier, we have held that the traveler is personally liable for any costs incurred because of his failure to comply with this requirement. 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, and Robert A. Young, B-192522, January 30, 1979."

Even though these decisions do not specifically discuss the equitable considerations for payment of a traveler who has been misled by a Government official, such considerations have not been overlooked. However, the statutory restriction placed upon spending the Government's funds must take precedence over such equitable considerations.

Accordingly, we sustain our Claims Division's finding that the travel of Mr. Longo and his dependents by foreign air carrier violated the Fly America Act. The record, however, suggests that his liability

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may have been improperly computed. The Official Airline Guide shows that a U.S. air carrier provided through service to Washington, D.C., originating in Budapest. Thus, it appears that U.S. air carrier service was available for 100 percent of the air mileage authorized. We note that Mr. Longo's liability in the amount of \$494.54 was computed on the basis of authorized travel by way of Rome, using U.S. air carrier service only for the transoceanic portion of the trip. In the absence of justification for a determination that the U.S. air carrier providing through service from Budapest was unavailable, Mr. Longo's liability should be recomputed on the basis of authorized travel using U.S. air carriers for the entire distance.

*Henry R. Van Cleave*  
For Comptroller General  
of the United States