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DECISION

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

[Entitlement to Air Transportation Expense] 9861

FILE: B-192548 DATE: APR 18 1979

MATTER OF: Geoffrey Arn - Fly America Act - Rest stop selection

DIGEST:

1. Incident to home leave travel from Paris to San Francisco, an employee and his wife traveled from Paris to London by foreign air carrier, took a rest stop in London and traveled on to San Francisco by U.S. air carrier. Although ~~their~~ the employee's rest stop in London was improper under the rest stop selection principles set forth ~~in~~ by the GAO decision, 57 Comp. Gen. 76 (1977), and resulted in reduced use of U.S. air carrier service available directly from Paris, the employee may be reimbursed air fare for travel to San Francisco without penalty since their travel predated the issuance of that decision on November 14, 1977.

2. Incident to return travel to Paris following home leave in San Francisco, ~~an~~ the employee and his wife took a rest stop in Boston. From Boston they traveled to London, where the employee performed temporary duty and took leave before traveling the remaining distance from London to Paris by foreign air carrier. ~~Since~~ The employee's wife could have traveled directly from Boston to Paris by U.S. air carrier, the amount reimbursable for her travel is required to be ~~reduced by the penalty determined in accordance with the~~ prorated by the formula set forth in 56 Comp. Gen. 209 (1977).

AGC 00010 This decision is in response to a request for a ruling by Edwin J. Fost, Chief, Accounting Section, Office of the Controller, Drug Enforcement Administration, as to the air transportation expense entitlement of Mr. Geoffrey Arn.

Mr. Arn and his wife were authorized home leave travel from Paris in the late summer and early fall of 1976. The question concerning Mr. Arn's transportation expenses entitlement arises because the manner in which he routed their travel between Paris and San Francisco resulted in use of a foreign air carrier between Paris and London. Mr. Arn and his wife could have traveled the

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entire distance from Paris to San Francisco aboard a U.S. air carrier providing daily service. However, U.S. air carrier service did not permit a stopover in London en route. Based on the assumption that they were entitled to a rest stop in London, Mr. Arn and his wife flew by foreign air carrier from Paris to London on August 31, 1976. They remained in London until the following day before continuing on to San Francisco by U.S. air carrier. Incident to their return travel on September 27, 1976, Mr. Arn and his wife flew from San Francisco to Boston where they took a rest stop before continuing on to London. Their travel as far as London was by U.S. air carrier. Mr. Arn performed temporary duty in London from September 29 to October 1, 1976. He apparently took leave from October 2 until noon, October 5, 1976, since he did not claim per diem for that period. His wife stayed with him while in London and they jointly returned to Paris on October 5, 1976, by foreign air carrier.

Mr. Arn points out that no U.S. air carrier provides service between Paris and London. He explains that because travel from Paris to San Francisco requires more than 8 hours, he was entitled to a rest stop under agency regulations. His determination to take a rest stop in London is explained as follows:

> "The purpose of a layover enroute is to provide needed rest for the traveler prior to performing additional travel of official business. The non-stop flight from London (or from Paris, for that matter) takes about 15 hours in the air. When the time required to make all the necessary preparations for a long trip like this, as well as to travel from one's residence to the airport, and to go through the usual security checks, is considered, it will be found that very much arduous activity is performed even prior to boarding the flight. Therefore the layover for required rest was taken at the first, and only, opportunity that became available."

In Matter of Michael A. Sulak, 57 Comp. Gen. 76 (1977), we held that the requirement to use available U.S. air carrier service imposed by the Fly America Act, 49 U.S.C. § 1517, necessarily limits the selection of rest stop locations. While our decision in the Sulak case was based on the finding that travel to the United

States from Accra, Ghana, by way of Frankfurt, Germany, was not performed by usually traveled route, we set forth the following guidance with respect to scheduling of rest stops:

> "Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. § 1517, necessarily limits the selection of rest stop locations. In accordance with 6 FAM 132.4, supra, the rest stop is required to be along a usually traveled route. As previously noted, a usually traveled route is defined as one of any number of routes that involves essentially the same cost and traveltime. That definition, set forth at 6 FAM 117v, supra, includes the caveat that 'selection of usually traveled routes * * * is subject to the provisions of sections 133 and 134 restricting use of foreign carriers.' Thus the question of proper rest stop selection depends upon the proper selection in the first instance of one or more usually traveled routes.
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> "While contemplating an expanded definition of usually traveled route to accommodate the purpose of 49 U.S.C. § 1517, our holding in 55 Comp. Gen. 1230 (1976) limits the employee's selection from among two or more usually traveled routes. That decision requires that the traveler use certificated U.S. air carrier service available at point of origin to the furthest practicable interchange point on a usually traveled route. Where an origin or interchange point is not served by a U.S. air carrier, noncertificated service is to be used to the nearest practicable interchange point to connect with certificated U.S. air carrier service. In general, a rest stop should be taken along a routing selected in accordance with these principles. Based on practical considerations such as availability of suitable accommodations and reliability of connecting service, an agency may determine that a particular city along a routing selected in accordance with our holding in 56 Comp. Gen. 1230, nevertheless, is not an appropriate rest stop location. In such cases, the employee's rest stop should be designated

at an appropriate location along the alternate routing that otherwise most nearly complies with the route selection principles set forth in that decision. Thus, the selection of a rest stop is no longer an unfettered prerogative of the traveler, inasmuch as selection made in disregard of the policy of 49 U.S.C. § 1517 may result in the traveler's personal liability in accordance with our holding in 56 Comp. Gen. 209, supra. However, as noted in 55 Comp. Gen. 1230, travelers will not be held accountable for nonsubstantial differences in distances served by certificated carriers.

"We believe that there is one other aspect of rest stop selection that requires clarification. The Department of State's regulation provides that the rest stop 'should be midway in the journey or as near to it as the schedule permits.' See 6 FAM 132.4. We recognize that particularly in the instance of travel between the United States and Africa, the distance between the two continents makes it impossible in many cases to select a rest stop that is anywhere near midway in the journey and still schedule the travel aboard U.S. air carriers to the extent required by 49 U.S.C. § 1517. However, we believe that in most cases of travel to and from Africa an adequate rest stop can be provided making proper use of U.S. air carriers, as long as neither the portion of the journey preceding the rest stop nor the portion remaining requires travel of more than 14 hours. Ordinarily, where a rest stop cannot be provided at a point near to midway in the journey, the traveler can be permitted additional rest at destination under 6 FAM 132.5, or, where travel aboard U.S. air carriers between the hours of midnight and 6 a.m. is involved, under the authority of 56 Comp. Gen. 629 (1977). Where a rest stop can only be scheduled so near to the point of origin or destination that it cannot serve its intended purpose, it may be eliminated altogether insofar as the traveler is authorized an appropriate period of rest at destination."

In the Sulak case, we recognized that proper rest stop selection is, in large part, a matter of travel administration. For this reason, the rest stop selection principles that it enunciates need not be applied to travel, such as Mr. and Mrs. Arn's, that occurred prior to November 14, 1977, the date the decision was issued. However, it should be recognized that Mr. Arn's decision to take a rest stop in England clearly contravenes those principles. In addition, his stopover in London did not serve the purpose for which a rest stop was intended. The flight from Paris to San Francisco involves only about an hour more traveltime than does travel from London to San Francisco. His decision to take a rest stop in London is precisely the situation noted in the Sulak case in which the rest stop location is so near to the point of origin as to be superfluous. A rest stop should have been scheduled at a point midway in the journey such as a city in the eastern part of the United States.

Because Mr. and Mrs. Arn's travel was performed before the date of the Sulak decision, their air fare from Paris to San Francisco may be reimbursed without penalty for use of a foreign air carrier between Paris and London. However, the circumstances of his wife's return travel raise a question not addressed by the submission. Although Mr. Arn's stopover in London incident to his return travel was for the purpose of performing temporary duty, his wife's travel appears to have been routed by way of London for personal reasons. Since she took a rest stop in Boston en route from San Francisco, her stopover in London cannot be viewed as a rest stop. Mrs. Arn could have traveled directly from Boston to Paris aboard a U.S. air carrier. Therefore, the air fare that may be reimbursed in connection with her return travel is required to be reduced by $64, the penalty determined in accordance with the proration formula set forth in 56 Comp. Gen. 209 (1977).

R.F.KELLER

(Deputy) Comptroller General
of the United States