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**DECISION**



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

**FILE:** B-202413

**DATE:** November 16, 1981

**MATTER OF:** Employee of Office of Dependents Schools -  
Medical Necessity for Use of Foreign Air  
Carrier

**DIGEST:**

1. Principal of Department of Defense (DOD) Dependents School in Hemer, Germany after consulting with physician and others determined that teacher should leave for United States as soon as possible for medical reasons. He thus scheduled her to return to Boston, Massachusetts, on following day aboard foreign flag air carrier. U. S. air carriers, however, were available but would involve changing airlines and making connecting flights in either London or New York. Subsequently, DOD has certified Principal's action as necessary and in the best interest of the Government. Under these circumstances use of foreign air carrier may be considered as necessity of medical nature.
2. Determination that U. S. air carrier can neither serve agency's transportation needs nor accomplish its mission is to be made by agency and will not be questioned by our Office unless it is arbitrary or capricious. Since agency made such determination here, teacher may be reimbursed for flight on foreign flag carrier.

This decision is in response to a request for an advance decision by the Per Diem, Travel and Transportation Allowance Committee (PDTATAC) as to whether it would be legal to pay a claim for reimbursement of transportation expenses incurred by a former civilian employee (Employee) of the Department of Defense for a flight from Frankfurt, Germany, to Boston, Massachusetts on a foreign flag air carrier. The request has been assigned PDTATAC Control No. 81-23.

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The Employee was hired in the United States, under a 2-year transportation agreement, for employment as a teacher by the Office of Dependents Schools (ODS), Department of Defense (DOD). She was assigned to the Hemer Elementary School, Hemer, Germany. Her initial tour of duty commenced with the 1980-81 school year. On September 29, 1980, the Employee submitted her resignation, effective October 10, 1980, and made plans to depart on the latter date by Braniff Airlines. However, by October 2, 1980, the Principal of the Hemer Elementary School, after consultation with a physician and other employees, decided that the best interests of both the Employee and the Government would be served if she would depart for the United States as soon as possible since she was experiencing severe problems of a psychological nature. The physician concurred in the Principal's decision.

The Principal made arrangements for the Employee to depart on a Lufthansa flight from Frankfurt, Germany, to Boston, Massachusetts, on October 3, 1980, before informing her of his decision. The Principal then persuaded her to change her plans for the October 10 departure. On the afternoon of October 2, 1980, the Principal accompanied the Employee to the airport to pick up her ticket and arranged for the Employee to stay with a friend who took her to the airport on October 3, 1980. The Principal was aware of the fact that employees who elect to return to the United States prior to the expiration of their transportation agreement do so at their own expense. The question of flying an American flag carrier was thus not of special concern. His primary concern was in arranging the safe and expeditious departure of the Employee who was experiencing severe problems of a psychological nature. In this regard, we note that the Official Airline Guide shows that three U. S. air carrier connecting flights to Boston from Frankfurt were available on October 3, 1980, but would involve changing to different airlines in either London or New York for travel to Boston.

Subsequently, the Director, ODS has also certified on behalf of DOD that it was necessary and in the best interests of the Government for the Employee to use the Lufthansa flight on October 3, 1980. Accordingly, a retroactive travel order was prepared and the usual

requirement was waived that employees who elect to return to the United States prior to the expiration of their tour of duty do so at their own expense.

Since the travel in the present case took place after February 15, 1980, it is governed by Section 21 of the International Air Transportation Competition Act of 1979, Public Law No. 96-192, 94 Stat. at 43-44, to be codified as 49 U.S.C. § 1517. (For convenience we will refer to this section as the Fly America Act which was also previously used to refer commonly to 49 U.S.C. § 1517 (1976). We note, however, that this amendment does not affect the outcome of the present case.)

The Fly America Act provides that:

The Comptroller General of the United States shall disallow any expenditure from appropriated funds for payment for personnel or cargo transportation in violation of this section in the absence of satisfactory proof of the necessity thereof.

49 U.S.C. § 1517, as amended.

In our decision Joint Chiefs of Staff, 57 Comp. Gen. 519, 522 (1978), we recognized the principle that foreign air carrier service may be necessary to accomplish the agency's mission if its use is required to avoid an unreasonable risk to the traveler's safety. Our later decision Richard H. Howarth, B-193290, February 15, 1979, concerned the case of an individual traveling to the United States for medical treatment. In that case we held that it was appropriate to schedule the travel by foreign air carrier to reduce the number of travel connections and avoid possible delays. Given the medical necessity involved, we concurred with the agency's determination that the travel by foreign air carrier was necessary to accomplish the agency's mission - her safe and expeditious medical evacuation.

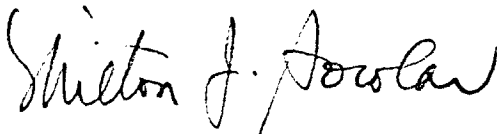
The determination that a U. S. air carrier can neither serve an agency's transportation needs nor accomplish its mission is to be made by the agency and will not be questioned by our Office unless it is

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arbitrary or capricious. Joint Chiefs of Staff, supra. Likewise, we note that the timing of travel to comply with the requirements of the Fly America Act is primarily a matter committed to the sound discretion of the agency involved in view of its needs and its determination as to when an employee is available for travel. Robert A. Young, B-192522, January 30, 1979, reconsideration denied, B-192522, April 22, 1981.

In the present case, in addition to the Principal's statement, we have a certification by the Director, ODS, on behalf of DOD that the use of a foreign carrier was necessary and in the best interests of the Government. We believe that such certification constitutes satisfactory proof of the necessity for the use of a foreign air carrier. Teofil Swiontek, B-199957, August 17, 1981. Furthermore, given the medical necessity involved, we cannot say that DOD's determination is arbitrary or capricious in these circumstances.

Accordingly, the voucher with attachments presented by the Employee for reimbursement of the cost of her flight from Frankfurt, Germany, to Boston, Massachusetts, is hereby returned to your Office and may be certified for payment.

*for*   
Comptroller General  
of the United States