

July 31, 2002

In Re:

Redacted

Claimant

Claims Case No. 02062502

CLAIMS APPEALS BOARD DECISION

DIGEST

A member performing circuitous travel pursuant to a permanent change of station purchased the tickets from a foreign-flag carrier in violation of the "Fly America" Act, 49 U.S.C. §§ 40117-40118. Reimbursement of the member is not proper under the Fly America Act unless he can provide the appropriate documentation required under paragraph U3125-C of volume 1 of the Joint Federal Travel Regulations to show the non-availability of a flight on an American carrier.

DECISION

This is in response to an appeal of DOHA's Settlement Certificate, DOHA Claim No. 01121808, January 16, 2002, which denied the claim of a Navy member for reimbursement of tickets on a commercial air carrier that he purchased for official travel.

Background

Pursuant to permanent change of station (PCS) orders, the member was to transfer from Camp Lejeune, North Carolina, to Rota, Spain, no later than July 13, 2001. The member intended to take personal leave en route in Panama City, Panama, and discussed this with a transportation officer in the Transportation & Travel Office, along with the possibility of procuring his own tickets with subsequent reimbursement by the Government. He was advised that his orders would

have to be modified to permit both circuitous travel and personal procurement of airline tickets. Pursuant to a modification of his PCS orders, the member was authorized to procure his own airline tickets and take his leave in conjunction with his PCS. ⁽¹⁾ The member purchased tickets on Iberia Airlines from Miami, Florida, to Panama City, Panama; Miami to Madrid, Spain; and Madrid to Jerez de la Frontera, Spain. The tickets cost \$3,909.60. The member's claim for reimbursement for the tickets was denied at his new duty station because he flew on a foreign-flag carrier.

In his appeal, the member states that he should be reimbursed because to the best of his travel agent's knowledge, there were no U.S.-flag air carriers available on the dates of his travel. The member attaches a statement from his travel agent in support of his position.

Discussion

Under the so called "Fly America Act," now codified at 49 U.S.C. §§ 40117-40118, a government agency must take necessary steps to ensure that passengers flying at government expense use certificated U.S.-flag carriers, unless the necessity for using a non-certificated carrier is proven in accordance with applicable regulations. At the time that the member traveled, those regulations were contained in change 175 to volume 1 of the Joint Federal Travel Regulations (1 JFTR). Under the 1 JFTR ¶ U3125-C2, a U.S.-flag carrier must be used if available even though the member prefers a non-certificated carrier or a non-certificated carrier is more convenient. The exceptions describing non-availability are contained in 1 JFTR ¶ U3125-C3. However, as a condition precedent to payment from government funds, the order-issuing official must authorize/approve use of a non-certificated carrier by a written and signed statement specifically explaining the reasons for non-availability. *See* 1 JFTR ¶ U3125-C4. Although the member was authorized to personally procure his tickets and travel over a circuitous route, he was not authorized to fly on a foreign-flag carrier, and has not provided a certificate as required by 1 JFTR ¶ U3125-C4.

The member has provided a letter from the travel agent he used to procure his travel. The agent states that Iberia Airlines offered the lowest fare available. The agent also states that to the best of his knowledge, there were no fares available with any U.S.- flag carrier for the member's travel dates. Unfortunately, this documentation does not constitute the certificate required under U3125-C4. The certificate must meet the requirements of the JFTR and the statements in the certificate must be issued by the official who authorized the travel - i.e., the order-issuing authority. For travel claims, we must base our decisions on the law and implementing regulations applicable to the situation at hand--in this case, the relevant portions of the JFTR in effect at the time the member traveled. *See* DOHA Claims Case No. 96123013 (June 2, 1997). In the present case, the member violated the Fly America Act when he purchased a ticket on Iberia Airlines. We are unable to reimburse a member in such a situation in the absence of the appropriate documentation required to show that an American airline carrier was unavailable either for the entire trip or individual legs of the trip.

Finally, the fact that the member was given misinformation from both transportation officers and military officials regarding reimbursement for his travel, does not provide a legal basis for reimbursement since the government is not liable for the erroneous or negligent actions of its officers, agents, or employees. *See* DOHA Claims Case No. 96070222 (January 27, 1997).

Conclusion

The member's claim is disallowed.

_____/s/_____

Michael D. Hipple

Chairman, Claims Appeals Board

_____/s/_____

Jean E. Smallin

Member, Claims Appeals Board

_____/s/_____

Catherine M. Engstrom

Member, Claims Appeals Board

1. Specifically, contained in Modification 1326 to BUPERS Order 3260 (02) was the following statement, "Member may arrange commercial transportation at personal expense with reimbursement limited by JFTR, par. U3110-D and U5116-D-E. For circuitous route travel, refer to OPNAVINST 4650.15. As an option, member may arrange transportation through a Navy passenger transportation office."