

DATE: February 10, 1998

In Re:

[Redacted]

Claimant

Claims Case No. 97121518

CLAIMS APPEALS BOARD DECISION

DIGEST

A member performing a permanent change of station may not be reimbursed for an airline ticket he purchased from a foreign flag carrier in violation of the "Fly America" Act, 49 U.S.C. §§ 40117-40118, unless he can provide evidence of non-availability of a flight on an American carrier. Lack of awareness of the "Fly America" Act does not justify failure to comply with it.

DECISION

We have been asked to render a decision regarding the claim of an Air Force member for reimbursement for an airline ticket which he purchased from a foreign air carrier. [\(1\)](#) Under Public Law No. 104-316, October 19, 1996, section 3702 of title 31 of the United States Code, which provides for settlement of claims, was amended to provide that the Secretary of Defense shall settle claims involving uniformed service members, including travel claims. The Secretary further delegated that authority to this Office.

Background

Pursuant to permanent change of station orders transferring him to RAF Lakenheath, Great Britain, the member traveled to Atlanta, Georgia, by automobile, arriving on October 13, 1997. Due to automobile trouble, he arrived at the Atlanta airport after his reporting time. Because he had lost his seat on his assigned flight, he was advised at the military counter to attempt to find a seat on a commercial flight at the Category Y military rate. He was advised to return to the military counter if he was unable to find a flight. The member states that he was unable to purchase a ticket from American Airlines or Delta, but purchased one from British Airways for \$914. Because he was able to buy a ticket, he did not return to the military counter. His claim for reimbursement for the ticket was denied at his new duty station because he flew on a foreign flag carrier. He states that he was unaware that he could not be reimbursed for airfare on a foreign flag carrier until his request for reimbursement was denied.

Discussion

The "Fly America" Act, now codified at 49 U.S.C. §§ 40117-40118, requires the use of American airline companies for travel paid for by the United States government unless evidence is presented that service by an American airline company was "unavailable." Paragraph U3125-C of volume 1 of the Joint Federal Travel Regulations (JFTR) implements the statute and sets out guidelines for determining "unavailability." Comptroller General decisions indicate that lack of knowledge of the Act does not justify failure to comply with it. See Major General Isaac D. Smith, USA, B-234719, Sept. 15, 1989.

This Office must render decisions in accordance with the applicable statutes and regulations. See DOHA Claims Case No. 96123013 (June 2, 1997). In the case before us, the member violated the "Fly America" Act when he purchased a ticket on British Airways. We are unable to allow a claim for reimbursement in such a situation in the absence of sufficient evidence that service by an American airline company was unavailable. While the member states that he first attempted to purchase a ticket from an American carrier, he has not provided sufficient evidence of unavailability as set

out in 1 JFTR para. U3125-C.

Conclusion

The member's claim is denied.

_____/s/_____

Michael D. Hipple

Chairman, Claims Appeals Board

_____/s/_____

Christine M. Kopocis

Member, Claims Appeals Board

_____/s/_____

Jean E. Smallin

Member, Claims Appeals Board

1. The Claims Appeals Board has decided to render a decision on this matter for administrative reasons.