



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

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1989

November 3, 1981

B-204041

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The Honorable Norman E. D'Amours
House of Representatives

Dear Mr. D'Amours:

This is in response to your inquiry, dated July 7, 1981, concerning our Claims Group's disallowance of the transportation expenses of Internal Revenue Service Special Agent Raul de Armas, who traveled to Madrid, Spain, by a foreign air carrier to obtain evidence for a tax evasion case. In the May 12, 1981 edition of the Wall Street Journal, the General Accounting Office's denial of Mr. de Armas' claim for transportation expenses was reported in an article which is critical of our application of the Federal Travel Regulations in this case.

After having carefully considered Mr. de Armas' claim and the circumstances pertaining to his travel arrangements, we must sustain our Claims Group's denial of reimbursement.

The Wall Street Journal article implies that Mr. de Armas' assignment required that he leave for Spain immediately and return as soon as possible. The article further implies that since the U.S. carriers which provided service to Madrid were routed through New York, travel by such carrier would have required more time and, thus, impeded the accomplishment of the employee's mission, whereas he could travel directly from his duty station at Miami to Madrid by way of the foreign carrier.

The Journal also states that the round-trip fare of the foreign carrier was about \$1,000 less than that of the other airlines providing the necessary service.

However, according to the record of Mr. de Armas' claim, the Journal account does not correctly represent the facts

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and circumstances surrounding his travel and our consequent denial of reimbursement.

In a memorandum to his regional office, dated February 23, 1981, Mr. de Armas explains that he was instructed by the Spanish police, who were assisting him in obtaining necessary evidence, to be prepared for travel to Spain as soon as the Spanish judge consented to his contacting and interviewing of witnesses. In anticipation of the trip, the employee states that on March 27, 1980, he purchased a round-trip ticket for travel to Spain by Iberia Airlines, a non-certificated carrier then offering flights to Madrid three times a week, departing Tuesday, Thursday and Sunday.

On April 2, 1980, the Spanish authorities informed Mr. de Armas that the interviews were scheduled to begin on the morning of April 4. He then booked an Iberian Airlines flight, scheduled to depart Miami on April 3 at 6 p.m. and to arrive at Madrid at 8:25 a.m.

Mr. de Armas further states: "I was not aware that official international Government travel was restricted to American-flag carriers only." This statement is attested to by the Jacksonville (Florida) District Director, who also says that the employee was not aware of the availability of the service of Trans World Airlines (TWA), a certificated carrier, scheduled to depart New York at 7 p.m. and to arrive at Madrid at 7:40 a.m. (Between the hours of 12 noon and 2:30 p.m. on the day Mr. de Armas left Miami, there were seven certificated carrier flights from Miami to New York by which connection could have been made with the TWA flight to Madrid.) However, Mr. de Armas says he did not consider traveling by way of New York because the difference between the cost of the Iberian flight and that of the TWA flight exceeded \$1,000. He also indicates that the schedule of the TWA flight would have required that he delay the meetings and interviews scheduled by the Spanish authorities.

We note initially that the TWA flight schedule would not have necessitated a postponement of the scheduled interviews since that flight was due to arrive 45 minutes

earlier than the Iberian flight. Since the employee purchased the Iberian ticket 7 days before his departure, it is evident that his mission did not require that he leave immediately, as indicated in the Wall Street Journal, but that there was ample time for him to confirm flight schedules on certificated carriers. Moreover, the fact that he purchased a ticket aboard a foreign air carrier offering only 3 flights a week belies the suggestion of urgency connected with his departure. The TWA flight to Madrid was scheduled to depart on a daily basis and would have given Mr. de Armas more flexibility in scheduling his travel, had timing been crucial. Furthermore, contrary to Mr. de Armas' statement and that of the Wall Street Journal concerning the cost of the flight by certificated carrier, the General Services Administration informed us that the round-trip fare for the TWA flight via New York on the date in question was \$938, not \$1,800 as reported.

The International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. § 1517, as amended by section 21 of Pub. L. No. 96-192, February 15, 1980, 94 Stat. 43 (Fly America Act), requires the use of certificated U.S. carriers for international air travel paid for from appropriated funds if service is available by such carriers. The Act further requires that the Comptroller General disallow any expenditures from appropriated funds for international travel by non-certificated air carrier, in the absence of satisfactory proof that such travel was necessary. In accordance with the congressional mandate, the Guidelines for the Implementation of the "Fly America Act," B-138942, March 31, 1981, specifically state that U.S. air carrier service is considered available even though a foreign carrier can provide more convenient service for the agency or traveler at less cost.

In this case, while it was more convenient and cost-effective for Mr. de Armas to use the direct flight from Miami to Madrid at a savings of \$147, these factors may not serve as a basis for international travel by a non-certificated air carrier. See 57 Comp. Gen. 519 (1978), and Robert A. Young, B-192522, January 30, 1979 (copies enclosed). Regardless of whether the employee was aware

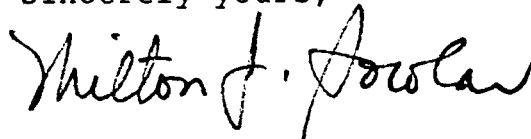
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of the provisions of the Fly America Act, failure to comply with its requirements renders him personally liable for the cost of his transportation since all Government travelers are deemed to be on notice of the statute. Colonel Nicholas S. Kotas, B-194779, August 5, 1980 (copy enclosed) and Robert A. Young, supra.

Although we deeply regret the inconvenience to Mr. de Armas, under the statute we had no alternative but to deny reimbursement for his transportation. Please be assured that the Fly America Act guidelines, referred to above, permit the use of a foreign air carrier where necessary to accomplish the agency's mission. Contrary to the impression created by the Wall Street Journal article, there does not appear to have been any necessity for Mr. de Armas to travel by foreign air carrier in this case.

We trust that this responds to your inquiries, as well as those of your constituent, and that any misconceptions that might have been created by the Wall Street Journal report of the incident are hereby clarified.

Sincerely yours,



Acting Comptroller General
of the United States

Enclosures