

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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June 11, 2003

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GSBCA 15960-TRAV

In the Matter of ROBERT B. FINKELMAN

Robert B. Finkelman, Reston, VA, Claimant.

Jacqueline E. Lynch, Acting Chief, Travel Management Branch, United States Geological Survey, Department of the Interior, Reston, VA, appearing for Department of the Interior.

**DeGRAFF**, Board Judge.

In some circumstances, agencies can reimburse employees for the costs of using foreign air carriers.

## Background

The Department of the Interior issued invitational travel orders to people from several countries to attend a coal science conference in the United States on September 24-27, 2001. Interior provided one of its employees, Robert B. Finkelman, a travel advance of \$12,000 to pay the costs incurred by those who were invited to the conference.

On September 11, 2001, attacks against the United States occurred in New York, Pennsylvania, and Virginia, and United States air carriers were forced to suspend operations for an indefinite time. On September 13, Interior determined that the coal science conference should not be canceled, in order to help Interior return to business as usual. Mr. Finkelman determined that due to the uncertainty regarding airline operations, it would best serve the interests of Interior if the conference attendees made the most expeditious travel arrangements possible. One attendee, who traveled from Korea on September 20, appears to have made his travel arrangements on September 19, and his air fare was \$1245.69. Another attendee traveled from Turkey and his air fare was \$754. Although it is not clear from the record when the attendee from Turkey began his travel, it appears he made his travel arrangements on September 11.

Mr. Finkelman submitted a voucher for the costs he incurred in connection with the conference, which amounted to \$14,921.14. Interior made a \$232.88 adjustment to the amount stated on the voucher and paid him \$688.57. This left a balance due to

Mr. Finkelman of \$1999.69. Interior decided it could not reimburse Mr. Finkelman the \$1999.69, because those funds were used by the conference attendees from Korea and Turkey to purchase their airline tickets from foreign air carriers, and Interior had not authorized the use of foreign air carriers. Mr. Finkelman asked us to review Interior's decision.

### Discussion

Invitational travelers are entitled to the same travel allowances as are federal civilian employees performing temporary duty travel. 41 CFR 300-3.1 (2001). Travelers are required to use United States air carriers in most circumstances, and will not be reimbursed for the cost of using foreign air carriers unless the use of a foreign air carrier is authorized. 41 CFR 301-2.5, -10.106, -10.132, -10.143. The use of a foreign air carrier can be authorized in several different circumstances, including when a United States air carrier is not available or when the use of a foreign air carrier is determined to be a matter of necessity. 31 CFR 301-10.135, -10.136, -10.137. Foreign air carrier service is deemed to be a matter of necessity when a United States air carrier, although available, cannot provide the air transportation needed or will not accomplish the agency's mission. Necessity includes, but is not limited to, circumstances in which the traveler needs medical treatment or the use of a United States air carrier would create an unreasonable risk to the traveler's safety. 41 CFR 301-10.138. Thus, Interior could have authorized the use of foreign air carriers if no United States air carrier was available or, if such service was available, the use of foreign air carriers was a matter of necessity.

Interior denied the claim because the conference attendees from Korea and Turkey used foreign air carriers. Interior does not seem to have considered, however, whether it could have authorized the use of foreign air carriers because no United States air carrier was available or whether the use of foreign air carriers was a matter of necessity. The September 11, 2001 attacks were extraordinary events that disrupted air travel to, from, and within the United States for days. Airports were closed for a time and when they reopened, flights had to be rescheduled and the volume of flights into many airports was limited. It was during this period of disruption that the two conference attendees made their travel arrangements. We do not know whether a United States air carrier was available when they made those arrangements. If not, then Interior could have authorized the use of foreign air carriers. Even if a United States air carrier was available when the two attendees made their travel arrangements, Interior could have authorized the use of foreign air carriers if the use of a United States air carrier would not have accomplished Interior's mission to host the coal science conference. Clearly, it was important to Interior that the attendees from Korea and Turkey attend the conference, otherwise Interior would not have issued their invitational travel orders. Perhaps it was more likely that the attendees could be assured of completing their travel, thereby accomplishing Interior's mission, by using foreign air carriers instead of United States air carriers, because the operations of foreign air carriers were not disrupted to the same extent as were the operations of United States air carriers.

Interior needs to reconsider Mr. Finkelman's claim and take into account the circumstances as they existed when the coal conference attendees made their travel arrangements. Even though the attendees from Korea and Turkey traveled on foreign air carriers, this does not necessarily create a bar to paying the claim. Interior can pay the claim

if no United States air carrier service was available or, if such service was available, the use of foreign air carriers was a matter of necessity.

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MARTHA H. DeGRAFF  
Board Judge