

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

July 15, 2005

GSBCA 16632-RELO

In the Matter of MAYNARD A. SATSKY

Maynard A. Satsky, APO Area Pacific, Claimant.

Rick Miller, Travel and Overseas Allowances Program Policy Manager, Force Sustainment Division, Office of the Chief of Staff, Department of the Air Force, Washington, DC, appearing for Department of the Air Force.

DANIELS, Board Judge (Chairman).

When Department of the Air Force employee Maynard A. Satsky was transferred from Ramstein Air Base, Germany, to Kadena Air Base, Japan, in January 2005, he and his wife traveled on a non-United States flag air carrier. He seeks reimbursement for the cost of the airfare, not to exceed the cost the Government would have incurred if he and his wife had traveled on a United States flag carrier.¹

The Air Force has considered this matter thoughtfully and thoroughly. Its representatives have denied the claim, but confess that they are not certain that this is the correct result. On the one hand, they believe that the equities demand reimbursement. On the other hand, they are concerned that Mr. Satsky proceeded without express authorization

¹ The terms “United States flag air carrier” and “United States flag air carrier service” are defined in the Federal Travel Regulation at 41 CFR 301-10.133 and -10.134 (2004). An understanding of these arcane definitions is not necessary to a resolution of this case.

to travel as he did. The Air Force representatives have asked the Board to decide whether reimbursement may be made in the absence of advance authorization.

We conclude that given the circumstances of the case, authorization may be given and reimbursement should be made.

Background

When Mr. Satsky received orders transferring him from Ramstein to Kadena, he decided to report without stopping in the United States. He asked the local travel management office (TMO) at Ramstein for airline tickets for the shortest, most direct route from Germany to Japan, flying east across Europe and Asia. The TMO told him that it could not issue these tickets because it routed all passengers through the United States. The finance office at Ramstein told him if he purchased tickets for the direct route commercially, he would be reimbursed for their cost, not to exceed the cost of tickets on a route through the United States, even if the tickets he bought were not on a United States flag carrier. Mr. Satsky then bought tickets for the direct route commercially, on a non-United States flag carrier. His orders were never amended to authorize this action, however.

Mr. Satsky and his wife used the tickets he purchased to travel to Japan. According to a representative of the Ramstein TMO, the portion of the trip by air took 14.5 hours. Also according to that representative, if he had issued tickets for a flight west, with connections in the United States, on United States flag carriers, the Satskys' air travel would have taken 27.5 hours – thirteen hours more than the flight east consumed. (According to on-line airline ticketing services, these numbers are both understated -- the former by less than an hour and the latter by several hours. Whether we use the agency's numbers or the on-line services', the result is the same.) The Air Force does not contend that a United States flag carrier provides service between Germany and Japan.

Discussion

Under the Fly America Act, Government agencies must ensure that their employees fly on United States flag air carriers whenever such a carrier is “reasonably available, if the transportation is between 2 places outside the United States.” 49 U.S.C. § 40118(a)(3)(B) (2000); *see Desiree Fray*, GSBCA 15012-TRAV, 99-2 BCA ¶ 30,485. The Administrator of General Services is charged with “prescrib[ing] regulations under which agencies may allow the expenditure of an appropriation for transportation in violation of this section only when satisfactory proof is presented showing the necessity for the transportation.” 49 U.S.C. § 40118(c).

Consistent with this statute, the Administrator of General Services has prescribed in the Federal Travel Regulation (FTR) that “[a]nyone whose air travel is financed by United States Government funds is required to use a United States flag air carrier, unless a regulatory exception applies.” 41 CFR 301-10.132 (2004). The regulatory exceptions are listed in three sections of the FTR, 41 CFR 301-10.135, .136, and .137. Among them is this one, for travel “solely outside the United States” when a United States flag carrier provides service between the origin and destination: “[W]hen compared to using a foreign air carrier, [use of a U.S. flag carrier] would [e]xtend [the employee’s] travel time by 6 hours or more.” 41 CFR 301-10.137(b).

The Joint Travel Regulations (JTR) implement and supplement the FTR with application to employees of the Department of Defense. The JTR state that when the use of a United States flag air carrier would extend travel time by at least six hours, United States flag air carrier service is considered to be unavailable. JTR C2204-C.1.g.

As the Air Force agrees, these laws appear to have permitted Mr. Satsky to fly on a non-United States flag air carrier from Germany to Japan. The “satisfactory proof . . . showing the necessity for the transportation” is, as allowed by the FTR, that flying this route on a United States flag carrier would have taken thirteen more hours than flying on a non-flag carrier. Because the regulatory exception is met, reimbursement of the cost of the transportation, up to the amount of the least expensive unrestricted economy airfare available for scheduled commercial air service over the route, is appropriate. *See* JTR C2206-C, -E.

The fly in the ointment, from the agency’s perspective, is the requirement for authorization. The FTR says that use of a foreign air carrier requires “a specific authorization or prior approval.” 41 CFR 301-2.5(b); *see also id.* 301-10.106(c). The JTR restates this requirement. JTR C3101-B.2; *see also id.* C2204-C.3 (“When the AO [authorizing/order-issuing official] determines that U.S. flag air carriers are unavailable, commercial foreign air transportation on a non-certificated air carrier may be authorized/approved.”).

As the Air Force notes, the Board has held that travel orders may be amended, after travel has occurred, “when the facts and circumstances clearly demonstrate that some provision previously determined and definitely intended has been omitted through error or inadvertence.” *E.g., Carl A. Wagner*, GSBCA 15896-RELO, 02-2 BCA ¶ 32,038 (quoting *Thomas A. McAfoose*, GSBCA 15295-RELO, 00-2 BCA ¶ 31,009); *see also Thelma H. Harris*, GSBCA 16303-RELO, 04-1 BCA ¶ 32,540 (2003); *Alice P. Pfefferkorn*, GSBCA 14124-TRAV, 97-2 BCA ¶ 29,313. We have also said, following a principle established in decisions of the Comptroller General (our predecessor in settling claims involving travel and relocation expenses of federal civilian employees), that travel orders may be amended

retroactively “if the original orders do not conform to applicable statute and regulation.” *Brian P. Byrnes*, GSBCA 14195-TRAV, et al., 98-1 BCA ¶ 29,535.

A variant of the latter exception to the general principle that travel orders may not be amended retroactively applies here. Under applicable regulations, which are permitted by statute, when use of a United States flag air carrier would take an excessive amount of time, such a carrier is deemed unavailable. Where that sort of carrier is unavailable, use of a non-United States flag air carrier may be authorized. While the FTR requires that authorization be given in advance of travel for certain kinds of travel, the use of a non-United States flag air carrier only requires “specific authorization *or* prior approval.” 41 CFR 301-2.5 & note thereto (emphasis added). We have found two instances in which the Comptroller General allowed reimbursement for the cost of travel by a non-United States flag carrier where a United States flag carrier was deemed unavailable pursuant to regulation, even though express authorization was not given in advance of the travel. *Colonel Dexter V. Hancock*, 73 Comp. Gen. 234 (1994); *Peter Young*, B-251103 (Apr. 5, 1993). We believe these cases were correctly decided and follow them here.

Decision

United States flag air carriers were unavailable for the route between Germany and Japan taken by Mr. Satsky and his wife. Authorization for travel via a non-United States flag air carrier may be given after the fact – and must be given here because there was no realistic alternative for the travel by the most direct route. The Air Force shall reimburse Mr. Satsky for the cost of his tickets, up to the least expensive unrestricted economy airfare available for scheduled commercial air service over that route.

STEPHEN M. DANIELS
Board Judge