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Leslie Wilcox

Civ. Pers.

**DECISION**



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

**FILE: B-138842**

**DATE: January 3, 1977**

**MATTER OF: Arthur R. Thompson - Fly America Act;  
liability formula; rest and recuperation**

- DIGEST:**
1. Employee's liability under 49 U. S. C. § 1517 and the Fly America guidelines should be determined on the basis of loss of revenues by certificated U. S. air carriers as a result of the employee's improper use of or indirect travel by noncertificated air carriers. To the extent that State Department's formulas at 6 FAM 134.5 impose liability based on gain in revenues by "unauthorized" carriers where traveler's actions merely shift Government revenues between noncertificated air carriers, those formulas unnecessarily penalize Government travelers.
  2. In the absence of agency instructions adopting a fare proration formula for determining traveler's liability for scheduling of travel in violation of the Fly America guidelines, this Office will apply a mileage proration formula calculating the traveler's liability based on certificated U. S. air carriers' loss of revenues.
  3. Under State Department instructions, alternate rest and recuperation (R&R) point is to be regarded as the employee's primary R&R point for purposes of 49 U. S. C. § 1517. Since certificated U. S. air carrier service is unavailable between the employee's duty station, Kinshasa, and his alternate R&R point, Amsterdam, employee's action in extending his ticket to include personal round-trip travel aboard a foreign air carrier to Los Angeles at a reduced through fare was not improper since his additional travel did not diminish receipt of Government revenues by certificated U. S. air carriers.

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Actual travel	
Through fare Washington to more distant point	<u>\$825</u>
Segment fares:	
U. S. flag, Washington to rest stop	\$504
Foreign flag (only avail) rest stop to post	\$479
Foreign flag post to more distant point	\$225
	<u>\$1208</u>

Calculation:

$$(504/983 \times \$800) - (504/1208 \times \$825) = \$410.17 - \$344.20 \\ = \$65.97$$

Since certificated U. S. carriers lost revenues of \$65.97, that amount should be deducted from the travel voucher or recovered from the employee, as appropriate. Note that in addition the employee is personally responsible for payment to the air carrier of the \$25 amount by which the extended or indirect through fare exceeds the authorized fare payable by the Government.

As indicated above, we find no basis for legal objection to State's use of a fare proration method for determining personal financial responsibility for improper travel aboard noncertificated air carriers. However, this method is administratively cumbersome since it requires a determination of the various segment fares and through fares in effect on the date travel was performed. The fares fluctuate and may be stated in terms of foreign currency, requiring a determination of the currency exchange rate in effect on that date and conversion to a dollar amount. We believe that the administrative costs involved could be substantially reduced by the use of a mileage proration formula since segment distances remain constant and can be ascertained from the Official Airline Guide. In the absence of administrative regulations adopting a fare proration formula for determining liability, this Office will apply the following mileage proration formula:

Sum of certificated carrier segment mileage, authorized		Fare payable x by Government
<hr/>		
Sum of all segment mileage, authorized		
MINUS		
Sum of certificated carrier segment mileage, traveled		Through fare x paid
<hr/>		
Sum of all segment mileage, traveled		

4. In view of State Department's instruction that alternate rest and recuperation (R&R) point is to be regarded as employee's primary R&R point for purposes of 49 U. S. C. § 1517 and application of the Fly America guidelines, employee's choice of alternate R&R location not serviced by certificated U. S. air carriers will be scrutinized to assure that it meets the purpose of rest and recuperation and was not selected for the purpose of avoiding the requirement for use of certificated U. S. air carriers.

This decision concerns the transportation expense entitlement under section 5 of the International Air Transportation Fair Competitive Practices Act, 49 U. S. C. § 1517, of Mr. Arthur R. Thompson in connection with rest and recuperation (R&R) travel performed aboard foreign air carriers. Until his separation in the spring of 1976, Mr. Thompson was stationed in Kinshasa, Republic of Zaire, as an employee of the Agency for International Development. In connection with his R&R travel, Mr. Thompson was authorized round-trip economy air fare from Kinshasa to Rome, in the amount of \$1,153.60. Amsterdam was ultimately designated his alternate R&R point in accordance with 3 FAM 698.8-3. The round trip segment air fare from Kinshasa to Amsterdam is \$1,241.60.

Prior to his departure on December 2, 1975, Mr. Thompson submitted the following itinerary:

December	2 Tues	LV Kinshasa	20:40	KLM
	3 Wed	AR Amsterdam	6:30	
	10 Wed	LV Amsterdam	15:55	LH
	10 Wed	AR Los Angeles	18:35	
January	4 Sun	LV Los Angeles	20:45	LH
	5 Mon	AR Amsterdam	16:45	
	5 Mon	LV Amsterdam	22:30	KLM
	6 Tues	AR Kinshasa	8:25	

Having received a cash advance for the \$1,153.60 amount of his air fare payable by the Government, Mr. Thompson purchased an excursion ticket on a foreign air carrier for round-trip travel from

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Kinshasa via Amsterdam to Los Angeles and return at a cost of \$1,289.60. Thus, for the amount of \$48 (\$1,289.60-\$1,241.60) in addition to the fare for round-trip travel between Kinshasa and Amsterdam the employee was able to travel from Amsterdam to Los Angeles and back, whereas the segment fare for round-trip travel between those two points is \$842.84. No American carrier was available for travel between Kinshasa and Amsterdam but American carrier was available between Amsterdam and Los Angeles. In view of the fact that the round-trip air fare between Kinshasa and Rome payable by the Government subsidized the employee's additional personal travel, the issue is whether Mr. Thompson violated the Fly America guidelines, B-138942, March 12, 1976, by traveling round trip between Amsterdam and Los Angeles aboard a foreign air carrier.

State Department's instruction regarding application of the Fly America guidelines to rest and recuperation travel is set forth in its Airgram, Message Reference No. A-7187, as follows:

"When an American carrier provides service between the post and the designated R&R point, the traveler is expected to schedule his/her departure to make use of such carrier. If, as sometimes occurs, an individual chooses an alternative R&R point, this location is treated as if it were the primary R&R point insofar as use of American-flag carriers is concerned.

"Thus, a traveler who could have gone to the designated R&R point using American-flag carriers might choose an alternative R&R point where American carriers may be used only for part of the trip or not at all. This would be permissible under the regulation, but is certainly not encouraged. In the converse situation, where the post and the primary R&R location are not connected by American flag service but the post and the alternate R&R location are, it is mandatory for the traveler to use the American carrier for travel to the alternate R&R point, if that location is selected. Stated another way, there is no 'credit' for the amount of foreign airline travel which would have occurred in going to the normal

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R&R location and there is likewise no 'penalty' for a lesser amount of American flag use in travel to an alternate R&R point."

In accordance with this instruction, the alternate R&R point is to be regarded as the primary R&R point for purposes of compliance with the Fly America guidelines.

There is no certificated U. S. air carrier service available between Kinshasa and Amsterdam. For this reason, Mr. Thompson properly traveled by foreign air carrier between his duty station and alternate R&R point. The question thus posed is the effect of his personal travel to Los Angeles.

The circumstances of Mr. Thompson's travel to Los Angeles would appear to be similar to the situation considered in Airgram Example No. 3. That example, involving the employee's extension of his ticket past post of assignment, is as follows:

"Travel is authorized from Washington to post but the traveler elects to purchase a through ticket to another point past his post of assignment.

"Through fare from Washington to post	\$800
Through fare from Washington to more distant point	<u>\$825</u>

"Actual travel:	
U. S. flag from Washington to rest stop	\$504
Foreign flag (only avail) from rest stop to post	479
Foreign flag from post to point of extension	225
TOTAL of segment fares	<u>\$1208</u>

"Traveler would be liable for: \$25 when he received his ticket, Plus: On his voucher

" $225/1208$  or  $.19 \times 825 = 156.75 - 25$  (paid above) = \$131.75"

Application of the above method of computation to Mr. Thompson's travel situation would result in a liability assessment against the employee of approximately \$380 for use of foreign carriers.

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This result points out a very basic problem with State Department's liability provisions published at 6 FAM 134.5 and amplified in the Airgram referred to above. In certain cases, application of these formulas impose liability on the traveler based on a shift of Government revenues between noncertificated air carriers, whereas the concern that prompted enactment of section 5 of the Fly America Act was the loss of revenues by certificated U. S. air carriers. Given the nonavailability of certificated U. S. air carrier service between Kinshasa and Amsterdam, certificated U. S. air carriers would have received no Government revenues if Mr. Thompson had limited his trip to round-trip travel between his duty station and authorized alternate R&R point. Therefore, extension of his ticket to include personal travel to and from Los Angeles aboard another foreign air carrier did not reduce certificated U. S. air carriers' receipts from Government revenues. Under the particular circumstances, there is no legal basis for the assessment of a penalty against Mr. Thompson for extension of his ticket to include personal round-trip travel aboard a foreign air carrier between Amsterdam and Los Angeles.

We feel it appropriate to note that Mr. Thompson in fact remained in Amsterdam for 1 week before departing for Los Angeles. Under these circumstances, we do not dispute his agency's designation of Amsterdam as his alternate R&R point. If Mr. Thompson had instead traveled to Amsterdam for the sole purpose of obtaining a connecting flight to Los Angeles, or if the tenure of his stay in Amsterdam had been so brief that the purpose of R&R travel could not have been met, we would be required to find that Los Angeles was in fact his alternate R&R point. Were this so Mr. Thompson's travel via Amsterdam aboard foreign carriers would have been improper since certificated U. S. air carriers are in fact available over a usually traveled route between Kinshasa and Los Angeles.

Where it appears that the designation of a specific location as the alternate R&R point is made for the purpose of avoiding use of certificated U. S. air carriers and where the employee's travel to that location does not meet the purpose of rest and recuperation, the traveler's liability for misuse of foreign air carriers will be determined on the basis of travel to the location at which he spends a significant amount of time for rest and recuperation purposes.

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We believe the State Department's liability formulas warrant further comment. The basic formulas are set forth in 6 FAM 134.5 are as follows:

"134.5 Personal Financial Responsibility for  
Unauthorized Use of Foreign Airlines

"Where no acceptable justification exists for using a foreign-flag airline over all or a part of the authorized route, or where a lesser amount of American-flag travel occurs because of indirect or interrupted travel for personal convenience, the additional amount of foreign-flag travel is not payable by the Government, but is for the personal account of the traveler.

"Where a direct through-fare involves both authorized segments on American or foreign carriers and unauthorized segments on foreign carriers, the traveler's share will be calculated using the ratio of the unauthorized segment fare to the total segment fare applied to the authorized through-fare.

"Example 1 Direct travel

"Through-fare between authorized points of origin and destination equals \$1000. Traveler elects to stop over and take a foreign-flag airline from an intermediate point where this is not authorized. The segment fare to the stopover point is \$700 and the segment fare on the foreign carrier is \$500. Accordingly, the traveler would be responsible for 5/12 of the through-fare or \$416.67. ( $\$700 + \$500 = \$1200$ ;  $\$500/\$1200 = 5/12$ ;  $5/12 \times \$1000 = \$416.67$ ).

"When an indirect through-fare includes both authorized segments on American and foreign carriers and unauthorized segments on foreign carriers, the traveler's share will be the difference between the direct through-fare and the indirect through-fare plus the difference

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between the direct through-fare and the segment fare(s) performed on authorized carriers. If the indirect segment fare(s) on American carriers or authorized foreign carriers/equals or exceeds the cost of the direct through-fare, the travelers responsibility will be limited to the difference between the direct through-fare and the indirect through-fare.

"Example 2 Indirect travel

"Through-fare between authorized points on a direct route is \$1000. The traveler elects to travel on an indirect route which has a through-fare of \$1400. Part of this indirect travel is by authorized carriers (\$800 segment fare) and part is by unauthorized foreign carriers (\$700 segment fare). The traveler would be responsible for paying the difference between the through-fares \$1400-\$1000 = \$400 plus the difference between the authorized through-fare and the amount of travel performed on authorized carriers \$1000-\$800 = \$200 for a total of \$600."

For the direct travel situation, State adopts a fare proration formula measuring gain in revenues by "unauthorized" foreign carriers. In the indirect travel situation, the fare proration method is abandoned in favor of a calculation that assumes certificated U. S. air carriers receive revenues equal to the segment fares for segments flown aboard certificated U. S. air carriers. Based on this assumption, the indirect travel formula attempts to measure loss of Government revenues by certificated U. S. carriers. The confusion that results from use of these different formulas is apparent from a consideration of Airgram Example No. 3, quoted above. That example, involving extension of the employee's ticket past his post of assignment, is no different in principle than the indirect travel situation. Yet, in that example, State applies its fare proration formula applicable to direct travel.

With respect to State's direct travel example, we have no objection to the use of a fare proration method of determining liability. Proration of the through fare based on the individual

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segment fares, or on a mileage basis, gives recognition to the fact that participating carriers generally receive an amount less than the individual segment fares and constitutes a reasonable attempt to determine that lesser amount. Generally, the through fare (total charge for air travel over two or more route segments) is less than the sum of the individual segment fares. The individual segment fares are ascertainable. However, the distribution of through fare revenues as between participating air carriers is a contractual matter between those carriers and, while some agreements are required to be filed with the Civil Aeronautics Board, they are not readily available for use by other departments and agencies of the Federal Government. In short, there is no practicable way for travelers or disbursing or certifying officers to determine how much of a through fare the individual participating air carriers actually receive.

Notwithstanding the appropriateness of a proration approach, we believe that the particular formula adopted by State for direct travel may unduly penalize travelers. As discussed in conjunction with Mr. Thompson's case, the formula would impose a penalty based on the employee's improper or indirect scheduling on one noncertificated air carrier as opposed to proper or direct scheduling aboard another noncertificated air carrier. While Congress intended that Government revenues not benefit noncertificated air carriers where certificated U. S. air carrier service is available, we find no intent to restrict expenditures of Government revenues where the employee's improper or indirect use of a noncertificated air carrier merely transfers Government revenues to that carrier from another noncertificated air carrier. We find nothing in the Act or its legislative history to suggest any obligation on the part of the Government to protect the income of one class of noncertificated air carriers as opposed to another class of noncertificated air carriers.

State's liability formula for indirect travel purports to measure loss of revenues by certificated U. S. air carriers as a result of the employee's improper or indirect scheduling aboard noncertificated air carriers. In view of the purpose behind the Fly America provisions, we believe that loss of revenues by certificated U. S. air carriers, rather than gain in revenues by noncertificated air carriers, is the appropriate measure of the traveler's liability for improper or indirect use of noncertificated air carrier service. However, we believe State's specific formula for determining

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liability in the indirect travel situation fails to take into account the fact that certificated U. S. air carriers generally receive less than the full segment fares when the ticket involves a through fare or total charge for air travel over two or more route segments.

In lieu of State's formulas we suggest a single proration formula for all situations measuring loss of revenues by certificated U. S. air carriers as the result of the employee's improper or indirect use of noncertificated air carrier service. The following formula, using fare proration, compares certificated U. S. air carrier revenues earned as a result of the employee's indirect or improper travel with the Government revenues certificated U. S. air carriers would have earned if the employee had traveled as authorized on official business and in accordance with the Fly America guidelines. It results in a penalty against the employee only where his actions cause certificated U. S. air carriers to suffer a loss of revenues:

Sum of certificated carrier segment fares, authorized	x	Fare payable by Government
<hr/>		
Sum of all segment fares, authorized		
MINUS		
Sum of certificated carrier segment fares, traveled	x	Through fare paid
<hr/>		
Sum of all segment fares, traveled		

The traveler is liable only if the difference is greater than zero.

Applying this formula to Airgram Example No. 3, discussed above, the calculation of liability is as follows:

Authorized travel	
Through fare Washington to post	<u>\$800</u>
Segment fares:	
U. S. flag, Washington to rest stop	\$504
Foreign flag (only avail) rest stop to post	\$479
	<u>\$983</u>

**DECISION**

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

**FILE: B-138842**

**DATE: January 3, 1977**

**MATTER OF: Arthur R. Thompson - Fly America Act:  
liability formula; rest and recuperation**

- DIGEST:**
1. Employee's liability under 49 U. S. C. § 1517 and the Fly America guidelines should be determined on the basis of loss of revenues by certificated U. S. air carriers as a result of the employee's improper use of or indirect travel by noncertificated air carriers. To the extent that State Department's formulas at 6 FAM 134.5 impose liability based on gain in revenues by "unauthorized" carriers where traveler's actions merely shift Government revenues between noncertificated air carriers, those formulas unnecessarily penalize Government travelers.
  2. In the absence of agency instructions adopting a fare proration formula for determining traveler's liability for scheduling of travel in violation of the Fly America guidelines, this Office will apply a mileage proration formula calculating the traveler's liability based on certificated U. S. air carriers' loss of revenues.
  3. Under State Department instructions, alternate rest and recuperation (R&R) point is to be regarded as the employee's primary R&R point for purposes of 49 U. S. C. § 1517. Since certificated U. S. air carrier service is unavailable between the employee's duty station, Kinshasa, and his alternate R&R point, Amsterdam, employee's action in extending his ticket to include personal round-trip travel aboard a foreign air carrier to Los Angeles at a reduced through fare was not improper since his additional travel did not diminish receipt of Government revenues by certificated U. S. air carriers.

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The traveler is liable only if the difference is greater than zero, and in no case is liable for an amount in excess of the segment fare payable for the segment improperly traveled.

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Comptroller General  
of the United States