

DECISION



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

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JUL 9 1975

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FILE: B-184136

DATE:

MATTER OF: **Joseph F. Giordano - Use of foreign
flag air carrier during travel**

DIGEST: (1) In appropriate instances where questions of payments to be made by a Governmental department are presented to the Comptroller General for decision by a departmental official who is not the department head, the questions will be decided and transmitted to the department head as if he had submitted them under 31 U.S.C. 74 (1970).

(2) Department of Health, Education, and Welfare employee may use foreign flag air carriers during travel while performing temporary duty because the use of one such carrier saved more than 12 hours from the origin airport to the destination airport than the use of an American flag air carrier, and the use of the other such carrier is essential to accomplish the Department's mission, which would render American flag air carriers "unavailable" under § 5 of the International Air Transportation Fair Competitive Practices Act of 1974, Pub. L. 93-623, 88 Stat. 2104 (49 U.S.C. 1517).

The Director of the Center For Disease Control, Public Health Service, Department of Health, Education, and Welfare has requested an advance decision as to whether the cost of a foreign flag air carrier used for travel incident to performing temporary duty shown in the submitted itinerary of Joseph F. Giordano can be paid. Since requests for decisions in matters such as this should be applied for by the head of a department or establishment of the Government, the submission will be treated as a request for an advance decision by the Secretary of the Department of Health, Education, and Welfare and answered accordingly. 41 Comp. Gen. 767 (1962).

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The submitted itinerary showed that Mr. Giordano departed his permanent duty station Atlanta, Georgia, by American flag air carrier Sunday morning June 22, 1975, and arrived at San Juan, Puerto Rico, Sunday afternoon. He made connections there by an American flag air carrier, finally landing at Port of Spain, Trinidad, Sunday evening. From Port of Spain Mr. Giordano took a foreign flag air carrier to Georgetown, Guyana, Tuesday evening June 24. On Thursday afternoon, June 26, Mr. Giordano took a foreign flag air carrier from Georgetown back to Port of Spain and then took an American flag air carrier out of Port of Spain Friday morning, June 27, which made connections at San Juan Friday afternoon with an American flag air carrier back to his permanent duty station, a few hours later.

Although the letter from the Director accompanying the itinerary stated that "* * * by using a foreign carrier leaving on Friday morning, he [Mr. Giordano] will be able to return to his official station that same afternoon," the itinerary correctly showed that American flag air carriers were used on Friday to get the traveler back to his official duty station by Friday afternoon. Evidently the accompanying letter was referring to the traveler using a foreign flag air carrier to get him from Georgetown to Port of Spain on Thursday afternoon, as shown on the submitted itinerary, rather than using a foreign flag air carrier on Friday because it is only by using a foreign flag carrier out of Georgetown on Thursday afternoon after the conclusion of his temporary duty that the traveler was able to be in Port of Spain in time to catch any flights out of Port of Spain on Friday.

The last flight out of Port of Spain on any given day is at 9:15 a.m., and there is only one flight by an American flag air carrier (a daily flight) from Georgetown to Port of Spain, leaving Georgetown at 9:00 a.m. and arriving in Port of Spain at 9:45 a.m. - one half hour after all the flights have left Port of Spain for the day. Therefore, if the traveler had used an American flag air carrier at the conclusion of his temporary duty to get from Georgetown to Port of Spain, rather than the foreign flag air carrier shown on the submitted itinerary, he would have had to wait until Friday morning at 9:00 a.m., which would have entailed

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him missing all the flights out of Port of Spain on Friday, and, as was correctly stated in the accompanying letter, "* * * the traveler will be delayed one whole day and will be required to travel on a non-work day, arriving at his official station on Saturday afternoon." The issue raised by the Director is the necessity of using an American flag air carrier if such use would be responsible for prolonging the actual travel time 24 hours.

Although the Director's accompanying letter mentioned that Congressional policy set forth in S. Con. Res. 53, 87th Cong. dated October 1, 1962, 76 Stat. 1428, permits use of a foreign carrier when necessary to avoid unreasonable delay, expense, or inconvenience, this policy has been superseded by section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, Pub. L. 93-623, 88 Stat. 2104 (49 U.S.C. 1517), which provides generally that American flag air carriers must be used whenever such service is "available." Since the Comptroller General has the responsibility under section 5 of this Act of disallowing expenditures from appropriated funds for Government-financed commercial foreign air transportation performed on a foreign flag air carrier in the absence of satisfactory proof of necessity, our Office issued implementing guidelines published in 40 Fed. Reg. 26076, June 20, 1975, which listed some of the instances in which American flag air carriers would be considered "unavailable" so that the necessity for using foreign flag air carriers could be shown. Pertinent to Mr. Giordano's problem is guideline 4(c) which states:

"Passenger service by a certificated air carrier will be considered to be 'unavailable': * * * when by itself or in combination with other certificated or non-certificated air carriers (if certificated air carriers are 'unavailable') it takes 12 or more hours longer from the origin airport to the destination airport to accomplish the agency's mission than would service by a non-certificated air carrier or carriers."

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The origin airport for Mr. Giordano's return trip after the conclusion of his temporary duty on Thursday afternoon was Georgetown, and since the next American flag air carrier out of Georgetown did not leave until Friday morning at 9:00 a.m., entailing a 24-hour delay in the return trip for the reasons already outlined, this American flag air carrier is considered "unavailable," and the use of the foreign flag air carrier from Georgetown to Port of Spain is approved.

Although the Director's accompanying letter did not mention or discuss the justification for using the foreign flag air carrier that was shown on the submitted itinerary to get the traveler from Port of Spain to Georgetown on Tuesday evening, the matter is for decision since the traveler's entire itinerary was submitted and American flag air carriers are required by section 5 of the Act to be used where they are "available." There was no American flag passenger service from Port of Spain to Georgetown on Tuesday, and we note that the only American flag passenger service on Wednesday left Port of Spain at 12:30 a.m. Wednesday morning and arrived at 1:45 a.m. Wednesday morning. Based on the assumption that the traveler conducted official business later Wednesday morning during normal business hours, Guideline 2 is pertinent, which states:

"Generally, passenger or freight service by a certificated air carrier is 'available' if the carrier can perform the commercial foreign air transportation needed by the agency and if the service will accomplish the agency's mission. Expenditures for service furnished by a non-certificated air carrier generally will be allowed only when service by a certificated air carrier or carriers was 'unavailable.'"

We would agree with an administrative determination which found that if the traveler were required to take the American flag air carrier that was scheduled to arrive in Georgetown Wednesday morning at 1:45 a.m., it would not be

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possible for the traveler to get to his hotel accommodations and perform the necessary personal functions that would enable him to properly conduct the agency's mission later Wednesday morning during the normal hours of business. Therefore, assuming that such a determination has been made, the American flag air carrier is considered "unavailable," and the use of the foreign flag air carrier from Port of Spain to Georgetown is approved.

We do not consider that granting a traveler reasonable hours of rest during his travel status so that he is able to perform the Department's mission upon arrival is inconsistent with Guideline 3(d) which states:

"Passenger or freight service by a certificated air carrier is considered 'available' even though: * * * service by a non-certificated air carrier is more convenient for the agency or traveler needing air transportation."

Undoubtedly situations will arise in which the determination whether a particular American flag air carrier is "available" under Guideline 3(d) or "unavailable" because it could not satisfy the Department's mission under Guideline 2 will be difficult to make. These situations should appropriately be handled on a case-by-case basis. However, in this instance, where it appears that the traveler got less than six hours rest before beginning the performance of his temporary duty on Wednesday morning, the American flag air carrier is "unavailable," and the use of the foreign flag air carrier justified.

R.F.KELLER

Deputy, Comptroller General
of the United States