



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 10, 2014

CBCA 4134-TRAV

In the Matter of DANIELLE M. CLAUDE

Danielle M. Claude, Weston, FL, Claimant.

James E. Hicks, Office of Chief Counsel, Drug Enforcement Administration, Department of Justice, Springfield, VA, appearing for Department of Justice.

GOODMAN, Board Judge.

Claimant, Danielle M. Claude, is an employee of the Department of Justice, Drug Enforcement Agency. She has asked this Board to review the agency's denial of reimbursement of costs she incurred during official travel.

Factual Background

Claimant was assigned to temporary duty in Cartagena, Colombia. She made airline reservations to fly on Avianca Airlines, a foreign air carrier, from Miami, Florida, to Cartagena on July 27, 2014, returning August 2, 2014. Claimant made the reservations on the Government's travel website on July 18, 2014. Claimant states that at the time of booking, the site would not allow for the selection of United Airlines flight 6662, and her attempt to select the flight resulted in an error message that the reservation could not be completed. She states further that the only flight the website allowed her to select was the Avianca flight. She was not aware that the Fly America Act required government travel to be accomplished on United States flag carriers, and she did not attempt to receive prior approval for making her reservation on a foreign carrier.

After completing her travel and submitting a travel voucher, her agency field officer advised that she needed to file a Fly America Act Waiver Certification, justifying her failure to fly on a United States carrier. The waiver was denied by the agency, as the same service

is offered by United as a code share on the same Avianca flight. When she informed the agency that the reservation was not available on United on the day she booked the reservations, the agency responded that there was no historical data available to prove claimant's allegation of non-availability on that day. Because claimant did not have prior authorization for use of a foreign carrier, nor could she prove the non-availability of a United States flag carrier, the agency denied her request for reimbursement.

Discussion

Pursuant to the Fly America Act, 49 U.S.C. § 40118(a)(3)(B) (2012), government-financed transportation requires the use of service provided by United States flag carriers to the extent such service is available. Agencies may allow the expenditure of an appropriation for transportation in violation of this requirement only when satisfactory proof is presented showing the necessity for the use of a foreign air carrier's transportation services. *Id.* § 40118(c); *see, e.g., Token D. Barnthouse*, CBCA 1625-RELO, 10-1 BCA ¶ 34,353; *James L. Landis*, GSBCA 16684-RELO, 06-1 BCA ¶ 33,225; *Maynard A. Satsky*, GSBCA 16632-RELO, 05-2 BCA ¶ 33,042; *Desiree Fray*, GSBCA 15012-TRAV, 99-2 BCA ¶ 30,485. The agency's Temporary Duty Travel Policy Handbook also requires employees flying internationally to seek prior approval and receive a Fly America Act Waiver Certification before flying on a foreign carrier if a United States Flag Carrier is not available.

Claimant has not met her burden to prove her claim. Even though United offered seats on the same flight, as a United States flag carrier code share, claimant cannot prove that those seats were not available when she made her reservations. She did not seek prior approval for booking the reservation from the foreign carrier by demonstrating that the seats were unavailable through United at that time.

It has long been the rule that, because the requirement for use of United States flag carriers is imposed directly by statute, all persons are charged with notice of it. For this reason, and because government funds may not be used to pay for unnecessary travel by foreign air carrier, the traveler is personally liable for any cost incurred because of his or her failure to comply with the requirement. *Barnthouse*.

Decision

The claim is denied.

ALLAN H. GOODMAN
Board Judge