



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 13, 2016

CBCA 5392-TRAV

In the Matter of ROBERT T. McMANUS

Robert T. McManus, Virginia Beach, VA, Claimant.

Helene Green, Travel Voucher Approving Official, Military Sealift Command, Department of the Navy, Norfolk, VA, appearing for Department of the Navy.

GOODMAN, Board Judge.

Claimant, Robert T. McManus, is a civilian mariner employed by the Department of Defense. He has asked this Board to review the agency's denial of reimbursement of costs incurred during official travel.

Background

Claimant was issued travel orders dated February 24, 2016, to accomplish official travel from Dubai to Norfolk, Virginia. The travel orders included a printed itinerary from SATO Travel (the government travel agent), an airline-generated reservation number, flight numbers, and seat numbers. The amount shown on the travel orders for travel was \$1475, which was the apparent cost of the airline ticket. The travel orders stated:

IF THERE ARE ANY CHANGES REQUIRED WHILE IN TRAVEL STATUS, PLEASE CONTACT THE EMERGENCY SERVICE CENTER Use of Navy Commercial Travel Office is Mandatory for making reservation arrangements. . . . U.S. FLAG CARRIER MUST BE UTILIZED WHEN AVAILABLE. ONLY SATO CAN DETERMINE THE NON-AVAILABILITY OF AN AMERICAN CARRIER AND IS THE ONLY AUTHORIZED ACTIVITY THAT CAN PURCHASE FROM A FOREIGN FLAG CARRIER. ALL CLAIMS FOR REIMBURSEMENT ON A

FOREIGN FLAG CARRIER WILL BE DENIED UNLESS SATO MAKES THE PURCHASE. . . .

Any deviation from the above itinerary for the employee's convenience is at own expense.

Claimant describes his difficulties on the day of travel as follows. On February 28, 2016, when claimant arrived at the Dubai Airport to check in for the first leg of the trip, he was advised by the airline that no tickets had been issued to him and that the flight was fully booked with no available seats. He called the airline directly and the airline confirmed that the ticket was never issued. He then attempted to call the SATO emergency number using prepaid phone cards that he purchased at the Dubai airport and was put on hold for extended periods, during which he used four of his five prepaid cards.

When SATO finally answered, he only had three minutes left on his card. The SATO representative confirmed that even though there was a SATO itinerary attached to the travel orders and an airline-generated reservation, SATO had failed to purchase the ticket. Claimant asked if SATO could purchase a ticket for him, but the SATO representative stated that he would have to fax his travel orders and any ticket purchase would have to be authorized the next business day. He offered to have the tickets purchased with his personal credit card, but the SATO representative said that was not authorized. At that point his phone card expired.

Claimant returned to the airline desk and the airline generated three itineraries for him, all of which involved travel on foreign-owned carriers. The least expensive was a flight on Lufthansa for \$1878.73, that claimant believed had a code-sharing arrangement with United Airlines. Claimant purchased this ticket with his personal credit card and traveled on this ticket to his destination.

On March 1, 2016, an officer on claimant's ship in Dubai emailed SATO asking why claimant's itinerary had been canceled. SATO's representative responded: "I would like to apologize for the miss on this one. No excuse for us missing to actually issue a ticket." Later that same day, claimant was advised by email from his travel officer: "It appears that NAVPTO screwed this one up. They forgot to issue the ticket. Sorry that happened to you."

The agency subsequently denied claimant's request for reimbursement of his ticket purchase, on the basis that he did not fly on a U.S. flag carrier airline, but flew on a "non-U.S. certificated air carrier." Claimant asked this Board to review the agency's denial, filing his detailed explanation that we have summarized above. Initially, the agency responded to the Board's docketing order by stating that "[n]o additional information would be forwarded."

The Board issued an order, referring to its Rule 403 (48 CFR 6104.403 (2015)), advising that the agency's response was not sufficient, and directing the agency to respond to the allegation of failure by the agency to purchase an airline ticket as indicated in the travel orders. The agency filed the following response:

Mr. McManus' travel authorization directed use of a U.S flag carrier in accordance with the Joint Travel Regulations (JTR) Chapter 3. Members are required to use U.S. flag carriers for all official commercial air transportation.

Military Sealift Command (MSC) policy is to comply with the JTR. Reimbursement for use of non U.S. flag carriers is not authorized except in very specific exceptions. The facts of Mr. McManus' case did not substantiate use of any of the exceptions and therefore reimbursement was denied.

Discussion

Pursuant to the Fly America Act, 49 U.S.C. § 40118 (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); *Danielle M. Claude*, CBCA 4134-TRAV, 15-1 BCA ¶ 35,827 (2014); *Token D. Barnhouse*, 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.

The Federal Travel Regulation (FTR) provides exceptions to the Fly America Act requirements:

What exceptions to the Fly America Act requirements apply when I travel between the United States and another country?

The exceptions are:

(a) If a U.S. flag air carrier offers nonstop or direct service (no aircraft change) from your origin to your destination, you must use the U.S. flag air carrier service unless such use would extend your travel time, including delay at origin, by 24 hours or more.

(b) If a U.S. flag air carrier does not offer nonstop or direct service (no aircraft change) between your origin and your destination, you must use a U.S. flag air carrier on every portion of the route where it provides service unless, when compared to using a foreign air carrier, such use would:

- (1) Increase the number of aircraft changes you must make outside of the U.S. by 2 or more; or
- (2) Extend your travel time by at least 6 hours or more; or
- (3) Require a connecting time of 4 hours or more at an overseas interchange point.

41 CFR 301-10.136 (2015).

These same exceptions are enumerated in the JTR that implement and supplement the FTR with application to employees of the Department of Defense. JTR 3525-E2.e.

Claimant did not vary his itinerary for his convenience—he did so because, when he arrived at the airport on the day of his departure, he first realized that the agency and the government travel agent had failed to purchase his airline ticket specified in his travel orders. When claimant followed the prescribed procedure for calling SATO, the government travel agent, SATO was not able to purchase a ticket for claimant or advise if any U.S. flag carrier was available, but stated that authorization for whatever flights might be available could not occur until the next business day. Claimant then sought advice from the airline ticket agent and was offered three tickets, none of which were from U.S. flag carriers. He purchased one of the tickets, believing it was a code-share with a U.S. flag carrier, and traveled to his destination. The agency does not deny claimant’s circumstances and admits its error in failing to purchase the ticket indicated on claimant’s travel orders. Even so, as the ticket claimant purchased was not from a U.S. flag carrier, the agency denied reimbursement.

As an initial matter, we note that, even if the foreign-flagged air carrier through which claimant purchased his airline ticket had actually had a code-sharing arrangement with a United States flag carrier airline (as claimant believed), claimant’s purchase of his ticket from the foreign-flagged carrier would not have complied with the limitations imposed by the Fly America Act. Under the FTR, U.S. flag air carrier service is defined as including “service provided under a code share agreement with a foreign air carrier,” but only “when the ticket, or documentation for an electronic ticket, identifies the U.S. flag air carrier’s designator code and flight number.” 41 CFR 301-10.134. Claimant did not purchase an airline ticket with the U.S. flag air carrier’s designator code and flight number, but instead

used the code and number of the foreign-flagged carrier. That does not count as a U.S. flag air carrier under the statute. *See Makila James*, CBCA 5010-TRAV, 16-1 BCA ¶ 36,308.

Even so, the agency's decision to deny reimbursement to claimant for his purchase of his ticket on a non-U.S. flag carrier fails to apply the exception to the Fly America Act that existed in claimant's circumstances. It is clear that there were no available flights for claimant on U.S. flag carriers on the day of travel, as evidenced by SATO's inability to procure authorization. As claimant was at the airport on the day of travel, and authorization for a U.S. flag carrier could not have been made until the next business day, claimant's use of a U.S. flag carrier would have extended his travel time by at least six hours or more. Accordingly, there is satisfactory proof showing the necessity for the use of a foreign air carrier's transportation services, as claimant's circumstances bring him within an exception to the Fly America Act.

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." *Satsky*, 05-2 BCA at 163,767 (citing *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. The facts and circumstances of this case clearly demonstrate that the tickets, definitely intended to be purchased, were omitted by the error of the agency the agency's travel agent. The agency is directed to amend the travel orders to account for claimant's circumstances that arose because of the agency's error, retroactively authorize claimant's use of a foreign air carrier's services, and reimburse claimant the actual cost of the ticket he purchased.

Decision

The claim is granted.

ALLAN H. GOODMAN
Board Judge