



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 24, 2016

CBCA 5010-TRAV

In the Matter of MAKILA JAMES

Makila James, Washington, DC, Claimant.

Scott A. Tiedt, Director, Transportation and Travel Management Division,
Department of State, Washington, DC, appearing for Department of State.

KULLBERG, Board Judge.

Claimant, Ambassador Makila James, seeks reimbursement in the amount of \$1180.40 for the cost of her round-trip airline ticket from Johannesburg, South Africa, to Washington, D.C. Ambassador James' agency, the Department of State (DOS), denied her claim because her purchase of a ticket for her flight on South African Airways (SAA) did not comply with the Fly America Act, 49 U.S.C § 40811 (2012). For the reasons stated below, the Board denies the claim.

Background

While assigned to the United States Embassy in Mbabane, Swaziland, Ambassador James was authorized temporary duty (TDY) in Washington, D.C. On July 15, 2015, Ambassador James purchased a round-trip ticket for her flight from Johannesburg to Washington, D.C., on SAA with a departure on August 13, 2015, and a return on September 8.

Upon her return, Ambassador James submitted her TDY claim. By letter dated September 23, 2015, DOS denied her request for reimbursement in the amount of \$1180.40

for her round-trip ticket between Johannesburg and Washington, D.C., because her purchase of a ticket from SAA violated the Fly America Act. Ambassador James subsequently submitted her claim to the Board.

Discussion

At issue in this matter is whether Ambassador James complied with the Fly America Act when she purchased her round-trip ticket from SAA. Ambassador James contends that she “purchased [her] ticket with the SAA Code-Share partner.” In its agency report, DOS stated that “the ticket on the foreign flag code-share partner must be purchased using the airline code of the U.S. flag carrier[, but] Ambassador James failed to meet this requirement resulting in denial of her claim.” In response to the agency report, Ambassador James raised two additional arguments: (1) an exception to the Fly America Act allows use of a foreign air carrier when the increased travel time on a U.S.-flag air carrier would exceed six hours; and (2) she sought guidance and acted in good faith when she purchased her ticket.

The Fly America Act requires that air travel between a place within the United States and a place outside the United States be restricted to air carriers certified under section 41102 of title 49, United States Code. 49 U.S.C § 40811(a)(3)(A). Under the Federal Travel Regulation (FTR), a certified air carrier under section 41102 is a U.S.-flag air carrier. 41 CFR 301-10.133 (2014) (FTR 301-10.133). In addition to certified air carriers, a “U.S. flag air carrier service also includes service provided under a code share agreement with a foreign air carrier . . . when the ticket, or documentation for an electronic ticket, identifies the U.S. flag air carrier’s designator code and flight number.” *Id.* 301-10.134. The Foreign Affairs Manual (FAM), which also applies to Ambassador James, provides that a “code-share flight qualifies as U.S. certified-service flag air service provided the ticket identifies the U.S. carrier’s code and flight number.” 14 FAM 583.9.b. In effect, a code-share agreement allows “a U.S. air carrier [to lease] space on a foreign air carrier and intends this service to be considered as service provided by the U.S. air carrier.” 70 Comp. Gen. 713, 714 (1991). “[T]he seats leased by the U.S.-flag carrier would show that carrier’s flight number, while remaining seats on the foreign carrier’s flight would show the foreign carrier’s flight number.” *James L. Landis*, GSBICA 16684-RELO, 06-1 BCA ¶ 33,225, at 164,645.

Although Ambassador James contends that SAA is a code-share partner with a U.S.-flag air carrier, her ticket shows the SAA flight number. In order to be reimbursed, Ambassador James’ ticket or other documentary evidence of her flight would have to show the flight number of the U.S.-flag carrier that had a code-share agreement with SAA. *See Catherine L. Haddow*, GSBICA 16240-TRAV, 04-2 BCA ¶ 32,693, at 161,776 (claimant met the requirement of the Fly America Act because her frequent flyer statement

showed her flight on a foreign air carrier with the U.S.-flag air carrier's flight number). Ambassador James, consequently, did not comply with the Fly America Act by purchasing her ticket from SAA.

Additionally, Ambassador James argues that an exception to the Fly America Act would allow reimbursement of her flight on SAA because available flights on other U.S.-flag air carriers would have extended her travel time by more than six hours. The FTR provides an exception to the Fly America Act when travel on a U.S.-flag carrier would extend travel time by six or more hours when compared with travel on a foreign air carrier. FTR 301-10.136(b). Exceptions to the Fly America Act, however, "are only applicable when the travel is being scheduled." *James L. Landis*, 06-1 BCA at 164,645. The exception Ambassador James cites is inapplicable to this case because, as discussed above, she could have complied with the Fly America Act by arranging her flight on SAA so that her ticket would have shown the flight number of the U.S.-flag air carrier that had a code-share agreement with SAA. Ambassador James has not shown why she could not have arranged her flight in that manner.

Finally, Ambassador James argues that she "acted at all times in good faith in seeking guidance from [her] Management Officer before purchasing [her] Code Share ticket." This Board has recognized that "[a] lack of notice, or even erroneous advice, from an agency to its employees during the travel reservation process about the Fly America Act's requirements does not change the fact that the applicable statute and its implementing regulations 'do not permit reimbursement for tickets issued on non-U.S.-flag carriers.'" *Matthew J. Klages*, CBCA 4942-TRAV, 15-1 BCA ¶ 36,165, at 176,480 (quoting *Mark Alden*, CBCA 4055-TRAV, 15-1 BCA ¶ 35,852, at 175,309 (2014)). The Board also reiterates its previously stated concern about the need to "identify ways to improve the agency's ability to assist in protecting its employees from inadvertent Fly America Act violations in the future." *Id.* While it is unfortunate that Ambassador James cannot be reimbursed for the expense of her flight, the Board does not have the authority to act outside of statute and regulation in resolving this matter.

Decision

The claim is denied.

H. CHUCK KULLBERG
Board Judge