UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 25, 2023

CBCA 7676-RELO

In the Matter of HANI A.

Hani A., Claimant.

Connie J. Rabel, Director, Travel Mission Area, Enterprise Solutions and Standards, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

SHERIDAN, Board Judge.

Claimant, Hani A., requests reimbursement for his renewal agreement transportation (RAT) air fare expenses for himself and his command-sponsored dependents. The Defense Finance and Accounting Service (DFAS) denied claimant's reimbursement because the tickets were issued in violation of the Fly America Act, 49 U.S.C. § 40118(a)(3)(A) (2018), which requires that persons traveling on funds provided by the Federal Government must, unless an exception applies, use a U.S. flag air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 41102).

Background

On May 11, 2021, claimant, a civilian employee of the Department of the Army (agency), was issued permanent change of station (PCS) orders for a transfer from Camp As Sayliyah in Qatar to Amman, Jordan. Claimant's orders were later amended for RAT between official stations. At claimant's old permanent duty station (PDS) in Qatar, his dependents were command sponsored and resided with him. However, as claimant's new duty station location was to be an unaccompanied tour, his dependents were not authorized to travel to Jordan. Instead, claimant's orders authorized his dependents' return travel to Richmond, Texas, and, to assist with his dependents' return travel, authorized him airfare and associated RAT leave prior to reporting to his new PDS.

In June 2021, claimant and his dependents proceeded to Houston, Texas, from Doha, Qatar, for RAT. Claimant states that he was instructed to use the commercial travel office (CTO) to schedule air travel:

> [A]ll USG [United States Government] employees on Camp As Sayliyah in Qatar were directed to utilize the base CTO office, Mannai Air Travel, for all official travel. I and many others were directed to go through Mannai Air Travel (which had an office on base) to purchase flight tickets using Government Travel Credit Cards (GTCC) in support of official TDY [temporary duty] missions.

Mannai Air Travel was nested within Camp As Sayliyah's Directorate of Logistics. Through Mannai Air Travel, claimant purchased five airline tickets with his Government credit card at a cost of $1267.86 per ticket plus fees.

Upon claimant submitting his travel voucher, DFAS only reimbursed claimant for his RAT airfare on a U.S. flag air carrier from Texas to Amman. Claimant was denied RAT airfare for himself and his dependents from Qatar to Texas because he had not used a U.S. flag air carrier. In denying reimbursement, DFAS referenced the Joint Travel Regulations (JTR) regarding the mandatory use of U.S. flag air carriers.

Discussion

At issue in this matter is whether claimant was required to comply with the Fly America Act when purchasing tickets for RAT airfare. Claimant contends that he followed all of the directions given to him by the agency by using the directed CTO. The agency asserts that while it "regrets that a more favorable determination was not made . . . based upon current regulations we find no authorization for additional reimbursement."

The Fly America Act requires that air travel between a place outside of the United States to a place within the United States be restricted to air carriers certified under section 41102 of title 49, of the United States Code unless such a carrier is unavailable. 49 U.S.C. § 40118(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 (2021) (FTR 301-10.133). The JTR, which apply to civilian employees of the military, also contains regulatory requirements with regard to the Fly America Act. JTR 020206 (May 2021) provides:

> I. U.S. Carriers Required. The Fly America Act requires that U.S. flag carriers be used for all commercial transportation when the Government funds the travel (49 U.S.C. § 40118(d)). The TMC [travel management coordinator] and AO [authorizing official], therefore, require that travel by air and ship be

> on a U.S. flag carrier for every leg of a trip, unless the TMC and AO provide supporting documentation that a U.S. flag carrier is not available.
>
> > 1. The Fly America Act does not mandate travel across the continental United States (CONUS) when traveling between two locations OCONUS [outside CONUS].
> >
> > 2. There is no transportation reimbursement, for any leg of a trip, when an unauthorized or unapproved non-U.S. flag air carrier service or foreign flag ship is used. If a U.S. flag air carrier service or a U.S. flag ship is available for an entire trip and the traveler uses a non-U.S. flag air carrier or foreign flag ship for any part of the trip, the transportation cost on the non-U.S. flag air carrier or the foreign flag ship is not payable (FTR § 301-10.143 and FTR § 301-10.181).
> >
> > 3. Documentation must be provided to the traveler to support all reasons when a non-U.S. flag air carrier is used in accordance with Service regulations. The documentation should include the traveler's name, non-U.S. flag air carrier used, flight number, origin, destination and en route points, dates, justification and the authorizing or approving official's title, organization, and signature. Endorsements on the order or Government-travel procurement document, made in accordance with Service regulations, are acceptable.

Claimant acted at all times in good faith in seeking guidance from his DTS coordinator before purchasing the tickets and conducting his travel. He used on-base services that gave the appearance of an official government travel office, and he had a reasonable expectation that the travel office to which Government employees were directed to book thousands of dollars in travel reservations would possess a minimum level of competence. The record does not show that Mannai Air Travel provided claimant with any documentation of non-availability of a U.S. carrier or counseled claimant as to the financial consequences of declining available U.S. flag carriers. However, 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 176,477 (quoting *Mark Alden*, CBCA 4055-TRAV, 15-1 BCA ¶ 35,852, at 175,309 (2014)). Unfortunately, claimant and his dependents were booked on and flew a non-U.S. flag air carrier, and it does not appear that claimant's airfare

fits within the exceptions set by the Fly America Act. *See* 41 CFR 301-10.135, - 10.136, and -10.137.

The Board reiterates, once again, 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." *Matthew J. Klages*, 15-1 BCA at 176,477. While it is unfortunate that claimant cannot be reimbursed for the expense of the tickets at issue, the Board does not have the authority to act outside of statute and regulation in resolving this matter. This case presents an example of where the DTS coordinator responsible for providing its agency's personnel travel authorization and assistance did a poor job of performing her duties, and this lack of acceptable job performance significantly financially harmed one of the agency's employees.

Decision

The claim is denied.

Patricia J. Sheridan
PATRICIA J. SHERIDAN
Board Judge