



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 15, 2014

CBCA 4055-TRAV

In the Matter of MARK ALDEN

Mark Alden, Okinawa, Japan, Claimant.

Jeffrey J. Svoboda, Chief, Relocations Division, Air Force Financial Services Center, Ellsworth Air Force Base, SD, appearing for Department of the Air Force.

SOMERS, Board Judge.

Claimant, Mark Alden, has asked the Board to review the agency's decision rejecting his claim for reimbursement for renewal travel expenses. For the reasons explained below, we find that the agency properly denied Mr. Alden's claim.

Background

Based upon the renewal of his overseas assignment at Kadena Air Base (AB) in Japan, travel regulations provide that Mr. Alden, a civilian employed by the United States Department of Defense (DoD), could take renewal agreement travel (RAT), with travel expenses paid for by the Government. In preparation for his RAT travel, Mr. Alden sought assistance from a government representative in the Travel Management Office (TMO) regarding his travel arrangements. The TMO representative advised Mr. Alden that he could purchase his own tickets over the internet.

Following this advice, Mr. Alden used an internet website for his travel arrangements. First, he booked roundtrip tickets for travel in June 2013, from Narita, Japan, to Denver, Colorado. Next, he booked roundtrip tickets from Naha International Airport (Naha) to Narita. Mr. Alden booked the tickets separately, waiting to book the Naha-Narita leg until

he finalized plans for traveling with his family. Mr. Alden states that, to his knowledge, no U.S.-flag carrier airlines fly out of Naha.

Mr. Alden submitted his claim for reimbursement. The agency denied reimbursement of the cost of the roundtrip tickets from Naha to Narita, a total of \$2568.40. The agency explained why it denied this portion of Mr. Alden's claim in the comment section of the travel voucher:

Supplemental to voucher #TX617652: Reimbursed employee for airfare associated with RAT. Delta airfare paid as claimed. Also paid currency conversion. Didnt pay airfare purchased through Japan airlines as A US Flag carrier must be used in connection with commercial travel and reimbursement cannot be allowed for travel on other than US Flag carriers unless the traveler furnishes a certificate that US Carrier were not available IAW [in accordance with] JTR [Joint Travel Regulations] Vol. 2. (Errors in original.)

Mr. Alden appeals to the Board, claiming that the agency should have explained to him how to purchase tickets to ensure reimbursement. In particular, Mr. Alden contends that no one explained to him that tickets purchased separately would not reflect any code-sharing arrangements. This lack of information caused him to obtain tickets from non-U.S.-flag carriers. He contends that if he had been aware of the need to purchase tickets from Naha to Denver so as to obtain the benefit of code sharing arrangements, he would have done so.

The agency responded to the notice of docketing with a letter from the self-described "paying" office. The agency notes that reimbursement for use of non-U.S.-flag carriers is not authorized unless approved. The agency points to the JTR paragraphs C3005-H and 3525-F, which provide guidance pertaining to the requirement to obtain documentation about the unavailability of U.S.-flag carriers. If Mr. Alden could obtain a statement from the TMO at Kadena AB indicating that a U.S.-flag carrier was not available to complete the required travel, the "paying" office agreed that Mr. Alden could submit a supplemental travel request to receive reimbursement.

In his reply to the agency's response, Mr. Alden says that "TMO has stated that they won't do a certificate/statement saying there wasn't a code sharing flight available because there's no way to prove there wasn't." Mr. Alden concludes his reply by stating that he relied upon the experts at TMO and that TMO refuses to take responsibility for the bad advice it provided to him regarding ticket purchase.

Discussion

The agency correctly denied the portion of Mr. Alden's claim for reimbursement for non-U.S.-flag carrier tickets. Under the Fly America Act, government agencies must ensure that their employees fly on U.S.-flag air carriers whenever such a carrier is "available, if the transportation is between a place in the United States and a place outside the United States" "or reasonably available, if the transportation is between 2 places outside the United States." 49 U.S.C. § 40118(a)(3)(A), (B) (2012).¹ 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. *See, e.g., 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.

Paragraph C3005-H of the JTR governs Mr. Alden's June 2013 travel and provides that "a traveler may not be reimbursed for travel at personal expense on a non-U.S. certified aircraft/ship, except as in pars. C3525 and C3665." JTR C3665 applies to commercial transoceanic ship transportation; it is not relevant here. JTR C3525-A.2 states:

¹ Various air transportation agreements between the United States and other countries, including Japan, called "Open Skies" agreements, allow certain foreign nations' airlines the right to transport passengers and cargo on scheduled or charter flights for U.S. Government procured transportation. The Defense Travel Management Office website states:

These agreements do not apply to the DoD Uniformed Services, nor to DoD civilian employees unless their travel is funded by a non-DoD agency IAW [in accordance with] that Agency's or Service's policy if a city-pair flight is not available for the scheduled official travel between the origin and destination. The agreement is not valid for travel funded by the Secretary of Defense or the Secretary of a military department (DoD Uniformed Services and DoD civilian employees and other civilians traveling on DoD funds) per DoD policy.

www.defensetravel.dod.mil/site/faqflyus.cfm (last visited on Dec. 9, 2014). Here, DoD paid for Mr. Alden's transportation. Therefore, the Open Skies agreement with Japan does not apply.

If the non U.S. certificated air carrier flight number is used on the ticket, the ticket is on a non-U.S. certificated air carrier and a non availability of U.S. certificated air carrier document is needed.

Because Mr. Alden had purchased tickets with a non-U.S. certificated air carrier flight number, the agency correctly required Mr. Alden to show that no U.S.-flag carrier was available for his travel. When Mr. Alden could not present a certificate or statement indicating that a U.S. certified air carrier was not available, the agency properly declined to reimburse him for the non-U.S.-flag carrier tickets.

Mr. Alden complains that no one told him that he was required to use a U.S.-flag carrier, or that he should have purchased his tickets at the same time so that his tickets would show a code share with a U.S.-flag carrier.² As noted previously, because Mr. Alden is unable to obtain documentation that a U.S.-flag carrier was unavailable, he cannot be reimbursed for those tickets. JTR C3525-H.

The fact that the agency did not explain to Mr. Alden that he had to purchase his tickets from a U.S.-flag carrier, or may have provided other erroneous advice to Mr. Alden, does not change the fact that the regulations do not permit reimbursement for tickets issued on non-U.S.-flag carriers. *See, e.g., Daryl J. Steffan*, CBCA 3821-TRAV, 14-1 BCA ¶ 35,734. As we stated in *Flordeliza Velasco-Walden*, CBCA 740-RELO, 07-2 BCA ¶ 33,634, at 166,580: “The Government is not bound by the erroneous advice of its officials, even when the employee relied on this advice to his detriment.” We conclude that the agency’s decision denying Mr. Alden’s claim for reimbursement is correct.

² As described in *Landis*,

Code-sharing arrangements, which are practices under which U.S.-flag carriers routinely lease space on foreign aircraft, rather than schedule their own flights, have been deemed to be in compliance with the Fly America Act, such that passengers may properly use tickets paid for by the Government under a code-share arrangement if the tickets were purchased from a U.S.-flag carrier. 70 Comp. Gen. 713 (1991). The Comptroller General’s decision explained that under such a system, the 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.

Decision

The agency properly denied Mr. Alden's claim.

JERI KAYLENE SOMERS
Board Judge