



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 21, 2020

CBCA 6719-TRAV

In the Matter of JAMES V. BAILEY

James V. Bailey, Claimant.

Helene Green, Financial Management Analyst, Military Sealift Command, Department of the Navy, Norfolk, VA, appearing for Department of the Navy.

SOMERS, Board Judge (Chair).

The agency has submitted this claim on behalf of claimant, James V. Bailey, a civilian employee of the Department of the Navy. Claimant seeks review of the agency's decision to deny reimbursement for airline tickets. For the reasons set forth below, we remand the claim to the agency with instructions.

Background

Claimant, a civilian employee assigned to a Navy vessel, requested and received permission to take "ships funded leave" from August 13 to October 6, 2019. The record indicates that claimant had initially received a government ticket on United Airlines for round-trip travel from Singapore to San Diego. On August 12, 2019, an email from a SATO [Scheduled Air Transportation Office] representative advised claimant, presumably in response to his request to change the ticket to accommodate leave travel plans, the following:

As I advised you earlier, your government ticket is on United Airlines. To re-route, you must stick to the same carrier in order to be able to use the value of your original ticket. As of today, the best fare on United for SIN-ATH [a flight from Singapore to Athens] is almost USD 5680. The value of your ticket is USD 676.93 only.

Claimant's travel orders only provided for \$1800 for airline travel. Claimant sought advice from the ship's purser, who instructed claimant to purchase his own tickets and simply submit the airline receipts for reimbursement upon return. Claimant purchased tickets from Orbitz, one from Singapore to Athens and the second from Athens to Fukuoka, Japan. Claimant paid a total of \$1766.57 for these tickets.

When claimant submitted his tickets for reimbursement, the agency initially declined to reimburse him, asserting that he had failed to attach the airline ticket receipt. Claimant contends that he provided the receipts to the agency on multiple occasions. The record includes two emails from Orbitz. The emails listed the Orbitz itinerary number, the date of purchase, and the cost of the one-way fares. The airline identified on both receipts is Qatar Airlines.

Discussion

The Fly America Act restricts a government employee's use of air travel to air carriers certified under section 41102 of title 49, United States Code. 49 U.S.C. § 40118(a) (2018)¹. 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 (2019) (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 FTR further provides that a traveler "will not be reimbursed for any transportation cost for which [he or she] improperly use[s] [a] foreign air carrier service." *Id.* 301-10.143. A traveler can only receive reimbursement for travel on a foreign air carrier when the traveler's agency authorizes such travel. *Id.* The Joint Travel Regulations (JTR), which also apply to claimant, similarly provide that "[t]here is no transportation reimbursement, for any leg of a trip, when an unauthorized or unapproved non-U.S. flag air carrier service . . . is used." JTR 020206-I.2.

The record does not address the issue of whether claimant had received authorization to use a non-U.S. flag air carrier service, nor did the agency raise the issue. If the agency did not authorize claimant's use of a foreign air carrier, then he would not be entitled to reimbursement for either of the flights on Qatar Airlines, which is a foreign air carrier. *See*

¹ One exception to this requirement is transportation provided under a bilateral or multilateral air transport agreement, to which the U.S. government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act. This exception does not apply in this case.

Richard W. Briggs, CBCA 6562-TRAV, 19-1 BCA ¶ 37,456. If claimant did not receive specific authorization to fly on a non-U.S. flag air carrier service, the fact that the purser advised him to buy the tickets did not excuse his failure to use a U.S. flag air carrier. *See Matthew J. Klages*, CBCA 4942-TRAV, 15-1 BCA ¶ 36,165 (claimant's lack of knowledge or lack of correct advice from agency personnel will not excuse his failure to use a U.S. flag air carrier).²

Decision

The case is remanded to the agency to determine whether claimant had received authorization from the proper authorities to use a non-U.S. flag carrier prior to purchasing these tickets. If the agency did not authorize the travel, the claim cannot be paid.

Jeri Kaylene Somers
JERI KAYLENE SOMERS
Board Judge

² Regulations provide some exceptions to the requirement for a written authorization. Thus, unless the written authorization allows for use of a foreign carrier, Mr. Bailey would need to establish that he falls into one of the exceptions in FTR 301-10.135, -10.136, or -10.137. The facts do not support a finding that he does.