

FOREIGN SERVICE GRIEVANCE BOARD

March 27, 1972

TO: Director, Office of Personnel and Manpower,
Agency for International Development
Washington, D, C.

SUBJECT: Record of Proceedings Kimber 71-26-AID-F10:
Findings and Decision of the Board in the
Case of FSR Grievant

KEF: 3 FAM 667.i.b.

[Grievant] submitted a formal grievance against the decision of USAID/redacted which resulted in a penalty of \$397.00 for his unauthorized use of redacted Air Lines on the redacted portion of SMA visitation travel to the

USA on May 28, 1971. Another penalty of \$605.45 was assessed grievant for his dependents' unauthorized use of redacted Air Lines on the redacted portion of dependents'

official travel to redacted safehaven residence, June 15 and

June 18, 1971, Grievant submitted a file of all communications on both matters as documentation to support justification for having used a foreign-flag airline in his official travel and the official travel of his dependents. He requested that the requirement to use an American-flag carrier be waived in both instances.

The Board conducted an investigation of the grievance, which consisted of examinations of the grievance file, of grievant's administrative file, the current STATE/AID/USIA travel regulations and the Official Airlines Guide, International Edition; telephone conversations with Pan American World Airways and Trans Korj Airlines; a personal interview with Travel Operatic- Officer in Air Travel and Transportation Division; telephone conversations with the Administrative Head of AID Voucher Examination Branch and the Assistant General Counsel for Management and Administration. In order to compare Department of State views in similar travel questions, telephone conversations were held with State's Supply and transportation Division and State's Financial Services Division.

As a result of the investigation, the Board learned that the grievant began his Site travel in redacted on May 27, 1971 aboard a Pan American flight. He disembarked in redacted and spent the night. He was supposed to continue his travel on a Northwest flight next day at 1240, but he missed the flight as a

result of accepting the word of a hotel desk clerk who told him that his flight departure time was 1400 instead of 1240. Pan American offered a standby position on a 1730 flight but stated that Northwest Air Lines would have to make the ticket changeover, Northwest was not able to give him a firm reservation for their 1240 flight next day but said they would let him know his status by 0300 or 1000 the following morning. Grievant related that redacted Air Lines was able to accommodate him on their 1600 flight. The ticket changeover was made by redacted. Grievant flew LAX to Honolulu, thence on American carriers to Spokane, Wash. As justification for having used the foreign-flag carrier, he cites an exception in AID Manual Order 560.2 section 134.4b, "travel by an American flag airline could not be performed in time to carry out the purpose of the travel." The purpose of the travel was to attend his daughter's graduation ceremony on May 30th. He states that if he had waited 24 hours for the next Northwest flight, he would not have arrived in Spokane in time for the graduation.

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Correspondence in the grievance file states that the grievant's wife was told by AID/Washington to take her government transportation request to her travel agent or to Northwest Air Lines to have tickets issued for the family's travel to redacted. The grievant, who was home on SMA visitation at the time, picked up the family's tickets at Northwest office. He questioned the head ticket agent about the requirements to use American-flag carriers, and the agent pointed out that the typed statement on back of the GTR authorized the use of foreign-flag airlines. (In fact, the statement authorized indirect travel, provided the traveler paid any extra costs.) The grievant's family was booked on Air India from redacted to redacted; when the family arrived in redacted they discovered that Air India was completely chartered, and the hotel travel desk booked them on redacted Air Lines to redacted and redacted. The grievant claims that the lack of guidance from the authorizing agency (AID/Washington) and reliance on Northwest Air Lines to properly book and ticket his dependents, is sufficient justification to waive the requirement to use an American-flag airline in this instance.

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Regarding the grievant's travel, the Board notes his lack of good judgment in unquestioningly accepting the word of the hotel desk clerk regarding departure time of the Northwest flight when his airline ticket showed otherwise. There is no evidence presented in the complaint that indicates he made

reasonable attempts to obtain booking on another American carrier after missing- the Northwest; flight. Representatives of Pan American state their airline had two daily flights -USA in May 1971; Trans World Airlines state tfeey had two daily flights at the same tiisa. The grievant Sees not claim that these carriers were booked to .bapftoffyj'Sift ■-'■'■-'r.: claims that if he had waited 24 hours for another Northwest flight, he would not have arrived in Spokane in time. This does not appear to be a valid claim, since an east-bound traveler over the Pacific gains one full day when crossing the international date line. Grievant's travel voucher shows his arrival in Spokane at 0930 on May 28. If he wished to ensure his timely arrival at his house, he could have remained on the US-bound Pan American flight on which he began travel in redacted. " *

The Board has determined that the grievant's unauthorised use of redacted Air Lines on the redacted portion of his travel is a violation of Section 134.2 AID M.O. 560.2 which requires government employees on official travel to use American-flag carriers on trans-Atlantic and trans-Pacific flights. The exception in Section 134.4b which grievant claims for his justification does not apply in this instance, for the reasons indicated above.

In the case of the grievant's dependents, the Board notes Section 115 of AID M.O. 560.2 which states that the traveler is responsible for the correct performance of official travel and for the payment of any charges incurred through failure to comply with the governing regulations, regardless of who may have assisted him in booking his travel arrangements. Section 134.2 states that regularly scheduled American-flag service should be used between points of travel. "Regularly scheduled service" implies a service that operates at least three times weekly. Pan American operated two daily services between Tokyo-Hong Kong, and Northwest had one daily flight at the time of the family travel. Pan American also had daily service between redacted and redacted in June 1971. The fact that three daily American flights were operating in June 1971 made it incumbent upon grievant's dependents to use an American-flag airline on that portion of their travel. Since the family spent three days in redacted for personal reasons, they could not claim "personal inconvenience" (an exception listed in AID M.O. 560.2 Sec. 134.4) as justification for their travel on the foreign carrier. There was a requirement to fly American-carrier and no claim was made that space was not available on such carrier.

On the basis of the findings in the Agency's investigation, the Board is compelled to uphold the Agency's decisions as respects failure to follow regulations in both instances, H

However, there is no evidence that charges were incurred by the Agency. Partherraora, the Agency has failed to cite any statutory or regulatory authority for imposing any financial penalty in these circumstances.

The Board is aware of the Congressional mandate to U. S. Government agencies to use American carriers when possible for all official air travel. However, in the absence of any regulation which designates a penalty and specifies how a penalty assessment is to be decided, the Board- (questions, first, the Agency's authority to continue the practice of assessing collection charges according to the point-to-point published air fare, A charge of this sort is excessive. It results in a greater penalty than the amount the foreign carrier actually received for the transportation provided when figured in long-distance or round-trip travel. It is thus an amount even greater than the "balance of payments" effect that prospected the Congressional mandate.

Furthermore, it is the Board's understanding that the use of the foreign-flag airline in these situations did not result in any extra expense to the U. S. Government. Under such circumstances, the Board believes that if any financial penalties are justified they should be determined on a more realistic basis.-

The Board believes that more serious consideration should have been given this case during the informal procedure, and that under the circumstances it is appropriate to remand this grievance to the Agency for further consideration in light of the opinion above. The Director, Office of Personnel and Manpower is directed to review this matter within the next 30 days. Unless within 30 days he can find express authority for assessing financial penalties against the grievant, the Agency is directed to cancel the penalties.

In conclusion, the Board has also taken note of further dispute between the grievant and the Agency which has arisen since the above penalties were imposed upon being notified of *the* penalties *and* asked to remit payment of the allowed items of \$€05.45 and \$397.90, the grievant apparently refused to do so. The Agency replied that the hour 14 rest stop the disputed allowance and file a grievance, The grievant filed

grievance, but has not remitted the amount requested lay the Agency pending a determination of the «a#e. The Agency then began collecting the assessed penalties by withholding grievant's SMA «j^M^>^7-t!^^^ffCte**at'-4L^Sf.3bBfMas the Board that 13sa Agency refused 'is»■"'jaa^ a travel Authorization for his SM& visitation, thereby refusing his to purchase his own airline ticket.

The Board deplores these punitive actions taken while this grievance was pending and instructs the Agency to discontinue determined withholding SMA allowances until the case has been finally

William E. SimJtin
Foreign Service Grievance Board

cc: Grievant