

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) AWA Docket No. 01-0015  
)  
DELTA AIR LINES, INC.; )  
a Georgia corporation, )  
) CONSENT DECISION  
Respondent. ) AND ORDER

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.)(the "Act"), by a complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondent willfully violated the regulations and standards issued pursuant to the Act (9 C.F.R. § 1.1 et seq.). This decision is entered pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

Respondent admits the jurisdictional allegations in the complaint and specifically admits that the Secretary has jurisdiction in this matter, admits the remaining allegations insofar as they are set forth herein as findings of fact and conclusions of law, waives oral hearing and further procedure, and consents and agrees, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision. The complainant agrees to the entry of this decision.

Findings of Fact

1. Respondent Delta Air Lines, Inc. ("Delta"), is a Georgia corporation whose business address is Hartsfield-Atlanta International Airport, 1010 Delta Boulevard, Post Office Box 20706, Atlanta, Georgia 30320-6001.

2. At all times mentioned herein, respondent Delta was registered as a carrier, as that term is defined in the Act and the Regulations.

3. Between December 30, 1999, and January 3, 2000, respondent Delta transported a six-year old live boxer dog named "Rex" from Frankfort, Germany, to Tucson, Arizona.

4. On December 30, 1999, Rex's owners traveled on Delta flight 49 from Frankfort to Cincinnati, Ohio, and arrived in Tucson that same day on Delta flight 255. Officials of respondent Delta assured Rex's owners that he was (1) in the cargo hold on flight 49, and (2) was fine. In fact, Rex was not on flight 49 at all. Respondent Delta transported Rex on Delta flight 15 from Frankfort to Atlanta on or about January 2, 2000. Respondent Delta held Rex overnight in Atlanta. On January 3, 2000, respondent Delta transported Rex to Dallas, Texas, on Delta flight 17. Rex arrived in Tucson on January 3, 2000, on Delta flight 527, having lost ten pounds. "Rex" died on February 11, 2000.

5. Between December 30, 1999, and January 3, 2000, respondent Delta failed to handle Rex as carefully and expeditiously as possible so as not to cause trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort.

6. Between December 30, 1999, and January 3, 2000, respondent Delta failed to notify, or to attempt to notify, Rex's owners upon arrival and at least once in every 6-hour period thereafter, and specifically failed to attempt to notify Rex's owners of his arrival in Atlanta, Georgia on January 2, 1999, or in Dallas, Texas.

7. Between December 30, 1999, and January 3, 2000, while Rex was in the custody of respondent Delta, said respondent failed to provide proper care, feeding, and housing to Rex, and failed to maintain the dog in accordance with generally-accepted professional and husbandry practices.

8. Between December 30, 1999, and January 3, 2000, while Rex was in the custody of respondent Delta, said respondent failed to observe Rex as frequently as circumstances allowed, and failed to observe Rex during loading and unloading and whenever the animal cargo space was

accessible to ensure that Rex had sufficient air, that the cargo area met the heating and cooling requirements, and the other Standards.

9. Between December 30, 1999, and January 3, 2000, while Rex was in the custody of respondent Delta, said respondent failed to determine whether Rex was in obvious physical distress.

#### Conclusions of Law

1. Between December 30, 1999, and January 3, 2000, respondent Delta failed to handle Rex as carefully and expeditiously as possible so as not to cause trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort, in willful violation of section 2.131(a)(1) of the Regulations (9 C.F.R. § 2.131(a)(1)).

2. Between December 30, 1999, and January 3, 2000, respondent Delta failed to notify, or to attempt to notify, Rex's owners upon arrival and at least once in every 6-hour period thereafter, in willful violation of section 2.100(b) of the Regulations (9 C.F.R. § 2.100(b)), and section 3.13(f) of the Standards (9 C.F.R. § 3.13(f)), and specifically failed to attempt to notify Rex's owners of his arrival in Atlanta, Georgia on January 2, 1999, or in Dallas, Texas.

3. Between December 30, 1999, and January 3, 2000, while Rex was in the custody of respondent Delta, said respondent failed to provide proper care, feeding, and housing to Rex, and failed to maintain the dog in accordance with generally-accepted professional and husbandry practices, in willful violation of section 2.100(b) of the Regulations (9 C.F.R. § 2.100(b)), and section 3.13(f) of the Standards (9 C.F.R. § 3.13(f)).

4. Between December 30, 1999, and January 3, 2000, while Rex was in the custody of respondent Delta, said respondent failed to observe Rex as frequently as circumstances allowed, and failed to observe Rex during loading and unloading and whenever the animal cargo space was accessible to ensure that Rex had sufficient air, that the cargo area met the heating and cooling

requirements, and the other Standards, in willful violation of section 2.100(b) of the Regulations (9 C.F.R. § 2.100(b)), and section 3.17(b) of the Standards (9 C.F.R. § 3.17(b)).

5. Between December 30, 1999, and January 3, 2000, while Rex was in the custody of respondent Delta, said respondent failed to determine whether Rex was in obvious physical distress, in willful violation of section 2.100(b) of the Regulations (9 C.F.R. § 2.100(b)), and section 3.17(b) of the Standards (9 C.F.R. § 3.17(b)).

6. The respondent has admitted the facts set forth herein as findings of fact and conclusions of law, the parties have agreed to the entry of this decision, and such decision will be entered.

#### Order

1. Respondent, its agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations and standards issued thereunder.

2. Respondent is assessed a civil penalty of \$25,000, which shall be paid by certified check or money order made payable to the Treasurer of the United States.

The provisions of this order shall become effective immediately. Copies of this decision shall be served upon the parties.

DELTA AIR LINES, INC.  
a Georgia corporation

By Jason R. Archambeau  
Its General Attorney

Colleen A. Carroll

Colleen A. Carroll  
Attorney for Complainant

Done at Washington, D.C.  
this 3rd day of February, 2003

James W. Hunt

James W. Hunt  
Chief Administrative Law Judge