

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 01-0036
)
DELTA AIR LINES, INC.,)
a Georgia corporation,)
)
Respondents.) CONSENT DECISION
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. On April 24, 2000, respondent Delta transported a four-pound fennec fox kit from Fort Myers, Florida, through Atlanta, Georgia, to Chicago, Illinois. The enclosure in which the fennec fox was housed was damaged in transit after it was accepted by respondent Delta in Fort Myers, Florida, the fennec fox was injured in transit, and the fennec fox died on April 25, 2000, as a result of the injuries it sustained in transit to Illinois.

4. On April 24, 2000, respondent Delta failed to handle a fennec fox kit so as not to cause it trauma, behavioral stress, physical harm, and unnecessary discomfort.

5. On April 24, 2000, respondent Delta accepted a fennec fox for transportation from Atlanta, Georgia, to Chicago, Illinois, in a primary enclosure that did not conform to section 3.137(a) of the Standards (9 C.F.R. § 3.137(a)), in that its structural strength had been compromised and was insufficient to withstand the normal rigors of transportation, in contravention of section 3.136(a) of the Standards (9 C.F.R. § 3.136(a)).

6. On April 24, 2000, respondent Delta accepted a fennec fox for transportation from Atlanta, Georgia, to Chicago, Illinois, in a primary enclosure that did not conform to section 3.137(a) of the Standards (9 C.F.R. § 3.137(a)), in that the interior of the enclosure was not free from protrusions that could be injurious to the animal housed within, in contravention of section 3.136(a) of the Standards (9 C.F.R. § 3.136(a)).

7. On April 24, 2000, respondent Delta failed to observe a fennec fox in its custody as frequently as circumstances allowed, and failed to determine whether the animal was in obvious physical distress, in contravention of section 3.140(a) of the Standards (9 C.F.R. § 3.140(a)).

8. On April 24, 2000, respondent Delta failed to provide needed veterinary care to an injured fennec fox as soon as possible, or at all, in contravention of section 3.140(a) of the Standards

(9 C.F.R. § 3.140(a)).

9. On April 24, 2000, respondent Delta transported an injured fennec fox that was in obvious physical distress, from Atlanta, Georgia, to Chicago, Illinois, in contravention of section 3.140(a) of the Standards (9 C.F.R. § 3.140(a)).

10. On April 24, 2000, respondent Delta failed to exercise care to avoid handling the primary enclosure housing a fennec fox in a manner that could cause physical trauma to the animal contained in the enclosure, in contravention of section 3.142(b) of the Standards (9 C.F.R. § 3.142(b)).

Conclusions of Law

1. On April 24, 2000, respondent Delta violated sections 2.100(b) and 2.131(a)(1) of the Regulations (9 C.F.R. §§ 2.100(b), 2.131(a)(1)) by failing to handle a fennec fox kit so as not to cause it trauma, behavioral stress, physical harm, and unnecessary discomfort.

2. On April 24, 2000, respondent Delta violated section 2.100(b) of the Regulations (9 C.F.R. § 2.100(b)), by failing to comply with the Standards governing the humane transportation of animals (9 C.F.R. §§ 3.136-3.142). Specifically, respondent Delta accepted a fennec fox for transportation from Atlanta, Georgia, to Chicago, Illinois, in a primary enclosure that did not conform to section 3.137(a) of the Standards (9 C.F.R. § 3.137(a)), in that its structural strength had been compromised and was insufficient to withstand the normal rigors of transportation, in contravention of section 3.136(a) of the Standards (9 C.F.R. § 3.136(a)).

3. On April 24, 2000, respondent Delta violated section 2.100(b) of the Regulations (9 C.F.R. § 2.100(b)), by failing to comply with the Standards governing the humane transportation of animals (9 C.F.R. §§ 3.136-3.142). Specifically, respondent Delta accepted a fennec fox for transportation from Atlanta, Georgia, to Chicago, Illinois, in a primary enclosure that did not conform to section 3.137(a) of the Standards (9 C.F.R. § 3.137(a)), in that the interior of the enclosure was not

free from protrusions that could be injurious to the animal housed within, in contravention of section 3.136(a) of the Standards (9 C.F.R. § 3.136(a)).

4. On April 24, 2000, respondent Delta violated section 2.100(b) of the Regulations (9 C.F.R. § 2.100(b)), by failing to comply with the Standards governing the humane transportation of animals (9 C.F.R. §§ 3.136-3.142). Specifically, respondent Delta failed to observe a fennec fox in its custody as frequently as circumstances allowed, and failed to determine whether the animal was in obvious physical distress, in contravention of section 3.140(a) of the Standards (9 C.F.R. § 3.140(a)).

5. On April 24, 2000, respondent Delta violated section 2.100(b) of the Regulations (9 C.F.R. § 2.100(b)), by failing to comply with the Standards governing the humane transportation of animals (9 C.F.R. §§ 3.136-3.142). Specifically, respondent Delta failed to provide needed veterinary care to an injured fennec fox as soon as possible, or at all, in contravention of section 3.140(a) of the Standards (9 C.F.R. § 3.140(a)).

6. On April 24, 2000, respondent Delta violated section 2.100(b) of the Regulations (9 C.F.R. § 2.100(b)), by failing to comply with the Standards governing the humane transportation of animals (9 C.F.R. §§ 3.136-3.142). Specifically, respondent Delta transported an injured fennec fox that was in obvious physical distress, from Atlanta, Georgia, to Chicago, Illinois, in contravention of section 3.140(a) of the Standards (9 C.F.R. § 3.140(a)).

7. On April 24, 2000, respondent Delta violated section 2.100(b) of the Regulations (9 C.F.R. § 2.100(b)), by failing to comply with the Standards governing the humane transportation of animals (9 C.F.R. §§ 3.136-3.142). Specifically, respondent Delta failed to exercise care to avoid handling the primary enclosure housing a fennec fox in a manner that could cause physical trauma to the animal contained in the enclosure, in contravention of section 3.142(b) of the Standards (9 C.F.R. § 3.142(b)).

8. 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 \$7,810, 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 James 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