

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 01-0037
)
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. On May 3, 2000, respondent Delta transported a female Yorkshire Terrier dog from Fort Myers, Florida, to Atlanta, Georgia. Respondent Delta checked the animal in at Fort Myers, Florida, at approximately 1:15 p.m., for flight 689 to Atlanta, Georgia, and connecting to flight 130. The animal, which weighed approximately 13 pounds, was transported in a carrier measuring approximately 11" (height) by 11" (width) by 20" (length). Delta flight 689 departed four minutes early, at 2:36 p.m., but did not arrive in Atlanta until 5:01 p.m., 16 minutes after schedule. Respondent Delta did not deliver the dog to Delta flight 130, which departed Atlanta at 5:51 p.m., in time for it to be loaded onto the plane. Respondent Delta then booked the dog onto Delta flight 66, which was scheduled to depart later that evening, and held the animal in its international bag room until it could be loaded onto that flight. While respondent Delta was in the process of loading the dog into the cargo hold of flight 66, the animal died.

4. On May 3, 2000, respondent Delta failed to handle a Yorkshire Terrier dog as carefully as possible so as not to cause trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort.

5. On May 3, 2000, respondent Delta accepted for transportation a Yorkshire Terrier dog in a primary enclosure that did not conform to the requirements of section 3.14 of the Standards.

6. On May 3, 2000, respondent Delta transported a Yorkshire Terrier dog in a primary enclosure that was too small to allow the animal contained within to turn about normally while standing, to stand and sit erect, and to lie in a natural position.

7. On May 3, 2000, respondent Delta failed to determine whether the Yorkshire Terrier was in obvious physical distress while in respondent Delta's custody.

8. On May 3, 2000, respondent Delta failed to observe a female Yorkshire Terrier dog in

its custody as frequently as circumstances allowed, and failed to observe the dog during loading and unloading and whenever the animal cargo space was accessible to ensure that the dog had sufficient air, that the cargo area met the heating and cooling requirements, and the other Standards.

Conclusions of Law

1. On May 3, 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 Yorkshire Terrier dog as carefully as possible so as not to cause trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort.

2. On May 3, 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 dogs (9 C.F.R. §§ 3.13-3.19). Specifically, respondent Delta accepted for transportation a Yorkshire Terrier dog in a primary enclosure that did not conform to the requirements of section 3.14 of the Standards, in contravention of section 3.13(d) of the Standards (9 C.F.R. § 3.13(d)).

3. On May 3, 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 dogs (9 C.F.R. §§ 3.13-3.19). Specifically, respondent Delta transported a Yorkshire Terrier dog in a primary enclosure that was too small to allow the animal contained within to turn about normally while standing, to stand and sit erect, and to lie in a natural position, in contravention of section 3.14(e) of the Standards (9 C.F.R. § 3.14(e)).

4. On May 3, 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 dogs (9 C.F.R. §§ 3.13-3.19). Specifically, respondent Delta failed to determine whether the Yorkshire Terrier was in obvious physical distress while in respondent Delta's custody, in contravention of

section 3.17(b) of the Standards (9 C.F.R. § 3.17(b)).

5. On May 3, 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. §§ 3.13-3.19). Specifically, respondent Delta failed to observe a female Yorkshire Terrier dog in its custody as frequently as circumstances allowed, and failed to observe the dog during loading and unloading and whenever the animal cargo space was accessible to ensure that the dog had sufficient air, that the cargo area met the heating and cooling requirements, and the other Standards, in contravention 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 \$2,500, 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