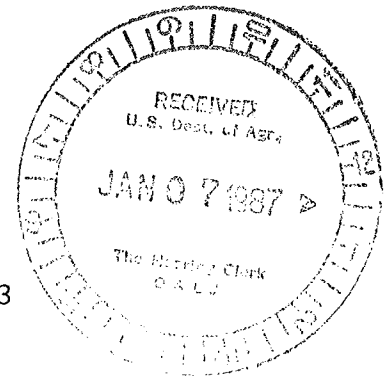


UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE



In re:) AWA Docket No. 363
Emery Air Freight)
Corporation,)
Respondent) Decision and Order

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.), by a complaint filed by the Administrator, Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture, alleging that the respondent 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).

The respondent admits the jurisdictional facts set forth below and specifically admits that the Secretary has jurisdiction in this matter, 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 Emery Air Freight Corporation is a corporation incorporated under the laws of the State of Delaware. Its principal place of business is located at Wilton, Connecticut 06897.

2. At all times material herein, respondent was engaged in the business of transporting animals for hire and was, therefore, an intermediate handler or carrier within the meaning of that term as defined in the Animal Welfare Act.

3. At all times material herein, respondent was registered under the Animal Welfare Act.

4. The Administrator of APHIS filed a complaint charging the Respondent with committing the following violations of the standards under the Animal Welfare Act:

- a. Accepting a primate on November 19, 1984, in a primary enclosure which lacked handholds, "Wild Animal" markings, and written instructions for food and water.
- b. Failing to ensure the safety and comfort of two primates carried on December 3, 1984.
- c. Accepting 203 hamsters and three guinea pigs on January 22, 1985, 12 hours before departure rather than the six hours permitted by the standards.
- d. Failing to ensure the safety and comfort of a primate which became frost-bitten while carried by respondent on February 7, 1985.
- e. Failing to ensure the safety and comfort of eight primates, two of which died of hypothermia while transported by respondent on February 7, 1985.
- f. Failing to avoid physical trauma to two rabbits carried on March 19, 1985, which died when the box in which they were carried was crushed.

5. The respondent admits the above violations.

Conclusion

The respondent having admitted the jurisdictional facts and the parties having agreed to the entry of this decision, such decision will be entered.

Order

1. The respondent, its agents, employees, successors, and assigns, acting directly or indirectly, or through any corporation, trust, or device whatsoever, shall cease and desist from:

- a. Accepting any cages which do not meet the standards of the Act.
- b. Failing to handle animals in compliance with the standards so as to ensure their safety and comfort during transport, including but not limited to assuring that the cargo space of transporting planes is adequately heated.
- c. Accepting animals more than four hours before the scheduled departure of the plane (six hours if prior arrangements are made).

2. The respondent is assessed a civil penalty of six thousand dollars (\$6,000) which shall be payable to the "Treasurer of the United States" by certified check or money order.

3. Respondent shall establish and maintain training programs to assure that all individuals involved in the care and handling of animals subject to the Act are properly trained in the standards under the Act.

4. Respondent shall distribute, by posting or otherwise, a copy of this decision and order to all its personnel who are responsible for the care and handling of animals subject to the Act. Respondent shall maintain an ongoing information program designed to ensure that such personnel are aware of the provisions of this decision and order.

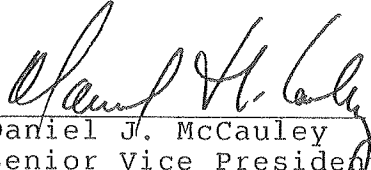
5. Respondent shall, within 60 days after service of this decision and order, send the Area Veterinarian In Charge a written report setting forth the steps it has taken to implement the requirements of this order.


The provisions of this order shall become effective on the first day after service of this decision on the respondent.

Copies of this decision shall be served upon the parties.

Emery Air Freight Corporation
Respondent

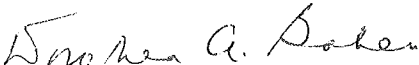
By:


Daniel J. McCauley
Senior Vice President,
Secretary and General Counsel


Donald A. Tracy
Attorney for Complainant


Lorraine B. Holloway
Attorney for Respondent

Issued this 7th day of January, 1987,
pursuant to "Substitution of Decision and
Order," filed December 23, 1986.


Dorothea A. Baker
Administrative Law Judge