

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No: 01-0038
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)
US AIRWAYS, INC., a Delaware)
corporation; BAX GLOBAL, INC., a)
Delaware corporation; and UNIVERSITY)
OF MASSACHUSETTS AT AMHERST,)
)
Respondent.) AMENDED COMPLAINT

There is reason to believe that the respondents named herein have willfully violated the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.)(the "Act"), and the regulations and standards issued pursuant thereto (9 C.F.R. § 1.1 et seq.)(the "Regulations" and the "Standards"). The Administrator of the Animal and Plant Health Inspection Service ("APHIS") therefore issues this amended complaint alleging the following:

JURISDICTIONAL ALLEGATIONS

1. Respondent US Airways, Inc. ("US Airways"), is a Delaware corporation whose business address is 2345 Crystal Drive, Arlington, Virginia 22227. At all times mentioned herein, respondent US Airways was registered as a carrier as that term is defined in the Act and the Regulations, under registration number 52-T-0101.

2. Respondent University of Massachusetts at Amherst ("UMass-Amherst"), is a public university whose business mailing address is Animal Care Office, 512 Goodell Building, Amherst, Massachusetts 01003-3220. At all times mentioned herein, respondent UMass-Amherst was registered as a research facility as that term is defined in the Act and the Regulations, under registration number 14-R-0036.

3. Respondent Bax Global, Inc. ("Bax Global"), is a Delaware corporation formerly known as Burlington Air Express, Inc., and whose business mailing address is 16808 Armstrong Avenue, Irvine, California 92606. At all times mentioned herein, respondent Bax Global was registered as a carrier as that term is defined in the Act and the Regulations, under registration number 93-T-0009.

4. On December 18, 2000, respondent US Airways transported 48 ferret kits from Buffalo, New York, through Pittsburgh, Pennsylvania, and Indianapolis, Indiana, to Evansville, Indiana. Upon the animals' arrival at the Evansville, Indiana, airport, said respondent placed the animals, in their enclosures, in respondent's cargo hold area, where they remained until December 26, 2000. By December 26, 2000, 44 of the animals had died. Two others died on December 26, 2000.

5. On June 19, 2001, respondent UMass-Amherst consigned 56 prairie voles to respondent Bax Global for transport to Tallahassee, Florida. On June 19 and 20, 2001, respondent Bax Global transported the 56 prairie voles from Amherst, Massachusetts to Orlando, Florida. On June 20, 2001, respondent US Airways transported the 56 prairie voles from Orlando, Florida, to Tallahassee, Florida. By the time of the animals' arrival in Tallahassee, Florida, on June 20, 2001, five of the prairie voles had died of heat stroke. By June 21, 2001, the condition of a sixth prairie vole had deteriorated to such a degree that it was euthanized on that date.

6. On August 8, 2001, respondent US Airways transported 15 live animals (3 guinea pigs, 6 long-haired hamsters and 6 short-haired hamsters) from Burlington, Vermont to Evansville, Indiana, through Philadelphia, Pennsylvania, and Pittsburgh, Pennsylvania. By the time of the animals' arrival in Evansville, Indiana on August 8, 2001, six of the long-haired hamsters had died of heat-related stress.

VIOLATIONS OF THE REGULATIONS AND STANDARDS

7. In 384 instances on eight separate days (December 18 through December 26, 2000), respondent US Airways 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 48 ferret kits as expeditiously and carefully as possible so as not to cause them trauma, behavioral stress, physical harm, and unnecessary discomfort. Specifically, respondent US Airways did not document the animals' arrival at the Evansville, Indiana, airport on December 18, 2000, and transported the animals, in their enclosure, to respondent's cargo hold area, where they remained until December 26, 2000.

8. In 32 instances on eight separate days between December 18 and December 26, 2000, respondent US Airways 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 US Airways failed to attempt to notify the consignee of 48 ferrets of the animals' arrival in Evansville, Indiana, in contravention of section 3.136(d) of the Standards (9 C.F.R. § 3.136(d)).

9. On December 18, 2000, respondent US Airways 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 US Airways failed to attach documents accompanying a shipment of 48 ferret kits to the outside of the primary enclosure in an easily accessible manner, in contravention of section 3.137(f) of the Standards (9 C.F.R. § 3.137(f)).

10. In 768 instances on eight separate days between December 18 and December 26, 2000, respondent US Airways 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 US Airways failed to provide potable water to 48 ferrets in its custody at least once every 12 hours for eight days, in contravention of section 3.139(a) of the Standards (9 C.F.R. § 3.139(a)).

11. In 384 instances on eight separate days between December 18 and December 26, 2000, respondent US Airways 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 US Airways failed to provide food to 48 ferrets in its custody for eight days, in contravention of section 3.139(b) of the Standards (9 C.F.R. § 3.139(b)).

12. In 384 instances on eight separate days between December 18 and December 26, 2000, respondent US Airways 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 US Airways failed to observe 48 ferrets in its custody as frequently as circumstances allowed, and failed to determine whether the animals were in obvious physical distress, in contravention of section 3.140(a) of the Standards (9 C.F.R. § 3.140(a)).

13. In 48 instances between December 18 and December 26, 2000, respondent US Airways 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 US Airways failed to provide needed veterinary care to 48 ferrets as soon as possible, or at all, in contravention of section 3.140(a) of the Standards (9 C.F.R. § 3.140(a)).

14. In 384 instances on eight separate occasions between December 18 and December 26, 2000, respondent US Airways 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 US Airways commingled a shipment of 48 live ferrets with inanimate cargo in its storage facility in Evansville, Indiana, where the animals remained for eight days, in contravention of section 3.141 of the Standards (9 C.F.R. § 3.141).

15. In 48 instances on December 18, 2000, respondent US Airways 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 US Airways failed to move 48 ferret kits from the primary conveyance to the animal holding area of the terminal facility as expeditiously as possible, in contravention of section 3.142(a) of the Standards (9 C.F.R. § 3.142(a)).

15. In 384 instances on eight separate occasions between December 18 and December 26, 2000, respondent US Airways 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 US Airways failed to exercise care to avoid handling the primary enclosure housing 48 ferret kits in a manner that could cause physical trauma to the animals contained in the enclosure, in contravention of section 3.142(b) of the Standards (9 C.F.R. § 3.142(b)).

17. In 56 instances on June 19, 2001, respondent UMass-Amherst violated section 2.38(f) of the Regulations (9 C.F.R. § 2.38(f)) by failing to handle 56 prairie voles as expeditiously and carefully as possible so as not to cause them trauma, behavioral stress, physical harm, and unnecessary discomfort, and specifically, said respondent caused the airwaybill for the prairie voles to be mislabeled to indicate that they were a species not covered under the Regulations, and consigned them to transportation by a route that, at a minimum, would require them to travel for more than 24 hours, on six flights, and through three states, before arriving at their final destination in Florida.

18. In 56 instances on June 19, 2001, respondent UMass-Amherst violated section 2.40(k) of the Regulations (9 C.F.R. § 2.40(k)), by failing to comply with the Standards governing the humane transportation of animals (9 C.F.R. §§ 3.136-3.142). Specifically, respondent UMass-Amherst offered 56 prairie voles for transportation to Tallahassee, Florida, in primary enclosures that did not have easily accessible openings, in contravention of section 3.137(a)(3) of the Standards (9 C.F.R. § 3.137(a)(3)).

19. In 56 instances on June 19, 2001, respondent UMass-Amherst violated section 2.40(k) of the Regulations (9 C.F.R. § 2.40(k)), by failing to comply with the Standards governing the humane transportation of animals (9 C.F.R. §§ 3.136-3.142). Specifically, respondent UMass-Amherst offered 56 prairie voles for transportation to Tallahassee, Florida, in primary enclosures that did not provide adequate ventilation, in contravention of section 3.137(a)(4) of the Standards (9 C.F.R. § 3.137(a)(4)).

20. On June 19, 2001, respondent UMass-Amherst violated section 2.40(k) of the Regulations (9 C.F.R. § 2.40(k)), by failing to comply with the Standards governing the humane transportation of animals (9 C.F.R. §§ 3.136-3.142). Specifically, respondent UMass-Amherst offered 56 prairie voles for transportation to Tallahassee, Florida, without attaching the documents accompanying the shipment to the outside of the animals' primary enclosures, in contravention of section 3.137(f) of the Standards (9 C.F.R. § 3.137(f)).

21. In 56 instances on June 19, 2001, respondent UMass-Amherst violated section 2.40(k) of the Regulations (9 C.F.R. § 2.40(k)), by failing to comply with the Standards governing the humane transportation of animals (9 C.F.R. §§ 3.136-3.142). Specifically, respondent UMass-Amherst offered 56 prairie voles for transportation to Tallahassee, Florida, without providing them with a

sufficient quantity of water, in contravention of section 3.139(b) of the Standards (9 C.F.R. § 3.139(b)).

22. On June 19, 2001, respondent UMass-Amherst violated section 2.40(k) of the Regulations (9 C.F.R. § 2.40(k)), by failing to comply with the Standards governing the humane transportation of animals (9 C.F.R. §§ 3.136-3.142). Specifically, respondent UMass-Amherst offered 56 prairie voles for transportation to Tallahassee, Florida, without affixing written instructions concerning the animals' food and water requirements, in contravention of section 3.139(d) of the Standards (9 C.F.R. § 3.139(d)).

23. In 112 instances on June 19 and June 20, 2001, respondent Bax Global 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 56 prairie voles as expeditiously and carefully as possible so as not to cause them trauma, behavioral stress, physical harm, and unnecessary discomfort, and specifically, said respondent misidentified the prairie voles on its airwaybill to indicate that they were a species not covered under the Regulations, and transported them by a route that, at a minimum, would require them to travel for more than 24 hours, on six flights, and through three states, before arriving at their final destination in Florida.

24. In 56 instances on June 19, 2001, respondent Bax Global 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 Bax Global accepted 56 prairie voles for transportation more than four hours prior to departure, in contravention of section 3.136(a) of the Standards (9 C.F.R. § 3.136(a)).

25. In 56 instances on June 19, 2001, respondent Bax Global 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 Bax Global accepted 56 prairie voles for transportation, in primary enclosures that did not conform to the requirements of section 3.137 of the Standards, in contravention of section 3.136(b) of the Standards (9 C.F.R. § 3.136(b)).

26. In 56 instances on or about June 19 and 20, 2001, respondent Bax Global 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 Bax Global failed to provide potable water to 56 prairie voles in its custody at least once every 12 hours after acceptance for transportation, in contravention of section 3.139(a) of the Standards (9 C.F.R. § 3.139(a)).

27. In 56 instances on June 19, 2001, respondent Bax Global 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 Bax Global accepted 56 prairie voles for transportation, without written instructions concerning the food and water requirements of such animals having been affixed to the outside of the animals' primary enclosures, in contravention of section 3.139(e) of the Standards (9 C.F.R. § 3.139(e)).

28. In 336 instances on June 19 and 20, 2001, respondent Bax Global 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 Bax Global failed to observe 56 prairie voles in its custody whenever the animals were loaded and unloaded to

ensure that the animals were receiving sufficient air for normal breathing, that their ambient temperatures were within prescribed limits, that all other applicable standards were being complied with, and to determine whether the animals were in obvious physical distress, in contravention of section 3.140(a) of the Standards (9 C.F.R. § 3.140(a)).

29. In 56 instances on June 20, 2001, respondent US Airways 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 56 prairie voles as expeditiously and carefully as possible so as not to cause them trauma, overheating, behavioral stress, physical harm, and unnecessary discomfort, and specifically, said respondent misidentified the prairie voles on its airwaybill to indicate that they were a species not covered under the Regulations, and held them in an outside animal holding area for over three hours, in temperatures in excess of 85 degrees Fahrenheit.

30. In 56 instances on June 20, 2001, respondent US Airways 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 US Airways accepted 56 prairie voles for transportation more than four hours prior to departure, in contravention of section 3.136(a) of the Standards (9 C.F.R. § 3.136(a)).

31. In 56 instances on June 20, 2001, respondent US Airways 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 US Airways accepted 56 prairie voles for transportation, in primary enclosures that did not conform to the requirements of section 3.137 of the Standards, in contravention of section 3.136(b) of the Standards (9 C.F.R. § 3.136(b)).

32. In 56 instances on June 20, 2001, respondent US Airways 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 US Airways accepted 56 prairie voles for transportation, without written instructions concerning the food and water requirements of such animals having been affixed to the outside of the animals' primary enclosures, in contravention of section 3.139(e) of the Standards (9 C.F.R. § 3.139(e)).

33. In 112 instances on June 20, 2001, respondent US Airways 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 US Airways failed to observe 56 prairie voles in its custody whenever the animals were loaded and unloaded to ensure that the animals were receiving sufficient air for normal breathing, that their ambient temperatures were within prescribed limits, that all other applicable standards were being complied with, and to determine whether the animals were in obvious physical distress, in contravention of section 3.140(a) of the Standards (9 C.F.R. § 3.140(a)).

34. In 56 instances on June 20, 2001, respondent US Airways 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 US Airways allowed the air temperature around 56 prairie voles in its animal holding area to exceed 85 degrees Fahrenheit, and failed to ascertain compliance with section 3.141 of the Standards by measuring and reading the air temperature around the animals' primary enclosures, in contravention of section 3.141 of the Standards (9 C.F.R. § 3.141).

35. In 56 instances on June 20, 2001, respondent US Airways 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 US Airways failed to move 56 prairie voles from its animal holding area to the primary conveyance as expeditiously as possible, in contravention of section 3.142(a) of the Standards (9 C.F.R. § 3.142(a)).

36. In 56 instances on June 20, 2001, respondent US Airways 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 US Airways failed to provide sufficient shade to 56 prairie voles in its custody, and to ensure that the animals were not subjected to surrounding air temperatures exceeding 85 degrees Fahrenheit for more than 45 minutes, in contravention of section 3.142(a)(1) of the Standards (9 C.F.R. § 3.142(a)(1)).

37. Between September 14 and November 2, 2001, respondent US Airways violated section 2.125 of the Regulations (9 C.F.R. § 2.125), by failing to furnish to APHIS information requested in connection with said respondent's transportation of fifteen animals (hamsters and guinea pigs) on August 8, 2001.

38. In 15 instances on August 8, 2001, respondent US Airways 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 15 guinea pigs and hamsters as expeditiously and carefully as possible so as not to cause them trauma, overheating, behavioral stress, physical harm, and unnecessary discomfort.

39. In 15 instances on August 8, 2001, respondent US Airways 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 guinea pigs and hamsters (9 C.F.R. §§ 3.35-3.41). Specifically, respondent US Airways accepted 15 guinea pigs and hamsters for transportation more than seven hours prior to departure, in contravention of section 3.35(a) of the Standards (9 C.F.R. § 3.35(a)).

40. In 15 instances on August 8, 2001, respondent US Airways 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 guinea pigs and hamsters (9 C.F.R. §§ 3.35-3.41). Specifically, respondent US Airways failed to observe 15 guinea pigs and hamsters in its custody whenever the animals were loaded and unloaded to ensure that the animals were receiving sufficient air for normal breathing, that their ambient temperatures were within prescribed limits, that all other applicable standards were being complied with, and to determine whether the animals were in obvious physical distress, in contravention of section 3.39(a) of the Standards (9 C.F.R. § 3.39(a)).

41. In 15 instances on August 8, 2001, respondent US Airways 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 guinea pigs and hamsters (9 C.F.R. §§ 3.35-3.41). Specifically, respondent US Airways failed to ascertain compliance with section 3.141 of the Standards by measuring and reading the air temperature around the primary enclosures of 15 guinea pigs and hamsters in its animal holding area, in contravention of section 3.40 of the Standards (9 C.F.R. § 3.40).

42. In 15 instances on August 8, 2001, respondent US Airways 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 guinea pigs and hamsters (9 C.F.R. §§ 3.35-3.41). Specifically, respondent US Airways failed to ensure that 15 guinea pigs and hamsters in respondent's animal holding area were not subjected to surrounding air temperatures exceeding 85 degrees Fahrenheit for more than 45 minutes, in contravention of section 3.41(a)(1) of the Standards (9 C.F.R. § 3.41(a)(1)).

WHEREFORE, it is hereby ordered that for the purpose of determining whether the respondents have in fact willfully violated the Act and the regulations issued under the Act, this amended complaint shall be served upon the respondents. The respondents shall file an answer with

the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250-9200, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 et seq.). Failure to file an answer shall constitute an admission of all the material allegations of this amended complaint.

The Animal and Plant Health Inspection Service requests:

1. That unless the respondents fail to file an answer within the time allowed therefor, or file an answer admitting all the material allegations of this amended complaint, this proceeding be set for oral hearing in conformity with the Rules of Practice governing proceedings under the Act; and
2. That such order or orders be issued as are authorized by the Act and warranted under the circumstances, including an order requiring the respondents to cease and desist from violating the Act and the regulations and standards issued thereunder, and assessing civil penalties against the respondents in accordance with section 19 of the Act (7 U.S.C. § 2149).

DATED: June 5, 2002

Respectfully submitted,



Colleen A. Carroll
Attorney for Complainant