

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 363
))
Emery Air Freight)
Corporation,)
))
Respondent) Complaint

There is reason to believe that the respondent named herein has violated the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.), hereinafter referred to as the Act, and the regulations and standards (9 C.F.R. § 1.1 et seq.) issued pursuant to the Act. Therefore, the Administrator of the Animal and Plant Health Inspection Service initiates this proceeding under section 19 of the Act (7 U.S.C. § 2149) and pursuant to the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 et seq.), hereinafter referred to as the Rules of Practice, and alleges the following:

I

(a) Emery Air Freight Corporation, hereinafter referred to as the respondent, is a corporation incorporated under the laws of the State of Delaware and having its principal place of business at Wilton, Connecticut 06897.

(b) At all times material herein, the respondent was the operator of an airline engaged in the business of transporting animals for hire.

(c) At all times material herein, the respondent was a registered carrier under the Act.

(d) At the time of respondent's application for registration, respondent was given a copy of the regulations and standards promulgated under the Act and respondent agreed in writing to comply with them.

II

On or about November 19, 1984, in violation of section 2.100 of the regulations and sections 3.85, 3.86 and 3.88(d) of the standards [9 C.F.R. §§ 2.100, 3.85, 3.86, and 3.88(d)], the respondent accepted for transportation in commerce at San Antonio, Texas, one (1) live nonhuman primate that was not contained in a primary enclosure meeting the required construction and marking standards, in that the enclosure lacked projecting rims, handholds or lifting devices, directional arrows and "Wild Animal" markings, and written instructions concerning the food and water requirements of the live nonhuman primate affixed to the outside of the primary enclosure.

III

On or about December 3, 1984, in violation of section 2.100 of the regulations and section 3.87(a) of the standards [9 C.F.R. §§ 2.100 and 3.87(a)], the respondent accepted for transportation in commerce at Detroit, Michigan, two (2) live nonhuman primates notwithstanding the fact that the animal cargo space of the primary conveyance used in transporting the nonhuman primates was not constructed and designed so as to ensure the safety and comfort of the nonhuman primates, and that as a result they died.

IV

On or about January 22, 1985, in violation of section 2.100 of the regulations and section 3.35(a) of the standards [9 C.F.R. §§ 2.100 and 3.35(a)], the respondent accepted for transportation in commerce at Boston, Massachusetts, three (3) live guinea pigs and two hundred and three (203) live hamsters approximately twelve hours before departure rather than within six (6) hours of the scheduled departure of the primary conveyance on which they were to be transported.

V

On or about February 7, 1985, in violation of section 2.100 of the regulations and section 3.87(a) of the standards [9 C.F.R. §§ 2.100 and 3.87(a)], the respondent accepted for transportation in commerce at Jamaica, New York, one (1) live nonhuman primate notwithstanding the fact that the animal cargo space of the primary conveyance used in transporting the nonhuman primate was not constructed and designed so as to ensure the safety and comfort of the nonhuman primate, and that as a result the nonhuman primate suffered severe frostbite.

VI

On or about February 7, 1985, in violation of section 2.100 of the regulations and section 3.87(a) of the standards [9 C.F.R. §§ 2.100 and 3.87(a)], the respondent accepted for transportation in commerce at Jamaica, New York, eight (8) live nonhuman primates notwithstanding the fact that the animal cargo space of the primary conveyance used in transporting the nonhuman primates was not constructed and designed so as to ensure the safety and comfort of the nonhuman primates, and that as a result two of the nonhuman primates died.

VII

On or about March 19, 1985, in violation of section 2.100 of the regulations and section 3.66(b) and 3.66(c) of the standards [9 C.F.R. §§ 2.100, 3.66(b) and (c)], the respondent accepted for transportation in commerce at Philadelphia, Pennsylvania, fifteen (15) live rabbits notwithstanding the fact that the primary enclosure used to transport the live rabbits was not properly handled so as to avoid causing physical or emotional trauma to the live rabbits contained therein, and that as a result two of the rabbits died from trauma.

VIII

By reason of the facts alleged herein, the respondent has violated the Act and the regulations and standards promulgated thereunder.

WHEREFORE, it is hereby ordered that for the purpose of determining whether respondent has, in fact, violated the Act and regulations promulgated thereunder, this complaint shall be served upon the respondent. The respondent shall have twenty (20) days after receipt of this complaint in which to file an answer with the Hearing Clerk, United States Department of Agriculture, 12th and Independence Ave., S.W., Washington, D. C. 20250, in accordance with the Rules of Practice (7 C.F.R. § 1.136). Failure to deny or otherwise respond to any allegation in this complaint shall constitute an admission of such allegation. Failure to file an answer within the time allowed therefor shall constitute an admission of all the material allegations in this complaint and a waiver of hearing.

The Animal and Plant Health Inspection Service requests:

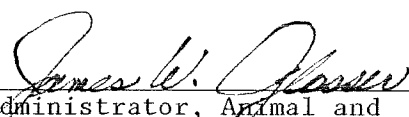
1. That unless the respondent fails to file an answer within the time allowed therefor, or files an answer admitting all the material allegations of this complaint, or enters into a consent decision as provided in the Rules of Practice (7 C.F.R. § 1.138), this proceeding be set for oral hearing in conformity with the Rules of Practice; and

2. That a cease and desist order be issued restraining respondent, its agents, employees, successors, and assigns, acting directly or indirectly, or through any corporation, trust, or device whatsoever, from violating any and all provisions of the Animal Welfare Act, 7 U.S.C. § 2131-2156, and the regulations and standards issued thereunder, 9 C.F.R. §§ 1.1-3.142; and

3. That an order be issued assessing a total civil penalty of six thousand dollars (\$1,000 per violation) against the respondent as authorized by the Act and warranted in the premises.

Done at Washington, D. C.

this 17th day of October, 1985



Acting Administrator, Animal and
Plant Health Inspection Service

KEVIN B. THIEMANN
Attorney for Complainant
Regulatory Division
Room 2422 South Building
Office of the General Counsel
U.S. Department of Agriculture
Washington, D. C. 20250-1400
Telephone: (202) 475-5672 or 447-5550

cc: J. Golden, OGC
T. Walsh, OGC
R. Cipolla, OGC
K. Thiemann, OGC
OGC:KTHIEMANN:SCH(LAWS):9/23/85
SCH/KT/8/29/85