

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 95-08
)
United Airlines, Inc.,)
)
Respondent) Complaint

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

I

A. United Airlines, Inc., hereinafter referred to as respondent, is a corporation with offices located at Post Office Box 66100, Chicago, Illinois 60666.

B. The respondent, at all times material herein, was a registered carrier under the Act.

II

On July 1, 1992, respondent accepted for transportation and transported in commerce one live dog as checked baggage for passenger Edward J. Cronin on flight number 215 from Boston, Massachusetts to Chicago, Illinois. Respondent failed to exercise care in the handling of the dog's primary enclosure in order to avoid physical harm or distress to the dog, in willful violation of section 2.100(b) of the regulations and section 3.19(b) of the

standards (9 C.F.R. §§ 2.100(b), 3.19(b)(1994)). As a result of respondent's actions, the dog escaped from its primary enclosure and was subsequently struck and killed by an airplane.

III

On October 28, 1990, respondent accepted for transportation and transported in commerce one live dog as checked baggage for passengers Jim and Cynthia Clark on flight 1299 from Austin, Texas to Denver, Colorado, in willful violation of section 2.100(b) of the regulations (9 C.F.R. § 2.100(b) (1990)) and the standards specified below:

1. The primary enclosure of the dog was not marked with the words "Live Animal" nor with arrows or other markings indicating the correct upright position of the container. (9 C.F.R. §§ 3.11(b), 3.12(f) (1990)); current provisions found at (9 C.F.R. §§ 3.13(d), 3.14((a)(6) (1994)).

2. Feed and water instructions were not affixed to the outside of the primary enclosure. (9 C.F.R. § 3.14(d) (1990); current provision found at (9 C.F.R. § 3.13(c) (1994)).

IV

On January 28, 1991, respondent accepted for transportation and transported in commerce one live dog for breeder/shipper Shannon O'Connell on flight 922 from Denver, Colorado to Tulsa, Oklahoma. Respondent failed to handle the dog as expeditiously and carefully as possible in order to avoid unnecessary trauma, overheating, excessive cooling, behavioral stress, physical harm,

or unnecessary discomfort to the dog in willful violation of section 2.100(b) and section 2.131(a)(1) of the regulations (9 C.F.R. §§ 2.100(b), 2.131(a)(1) (1994)).

V

On February 28, 1990, respondent accepted for transportation and transported in commerce, five live dogs for shipper Hazelton/LRE Research Products. The primary enclosures of the dogs were not marked with the words "Live Animal" nor with arrows or other markings indicating the correct upright position of the containers in willful violation of section 2.100(b) of the regulations and sections 3.11(b) and 3.12(f) of the standards. (9 C.F.R. §§ 2.100(b), 3.11(b), 3.12(f) (1990)); current provisions found at (9 C.F.R. §§ 3.13(d), 3.14(a)(6) (1994)).

VI

On May 15, 1990, respondent accepted for transportation and transported in commerce one live dog for shipper Patricia Mortimer. Respondent accepted the animal on a C.O.D. basis without obtaining from the consignor a written guarantee for payment of transportation and out-of-pocket expenses in willful violation of section 2.100(b) and section 2.80 of the regulations. (9 C.F.R. §§ 2.100(b), 2.80 (1990)); current provision found at (9 C.F.R. § 2.79(a) (1994)).

VII

On May 15, 1990, respondent accepted for transportation and transported in commerce for shipper Jeniece Kimminan four live

kittens from Nebraska to Burbank, California in willful violation of section 2.100(b) of the regulations (9 C.F.R. §2.100(b) and the regulations and standards specified below:

1. Respondent accepted the animals on a C.O.D. basis without obtaining from the consignor a written guarantee for payment of transportation and out-of-pocket expenses. (9 C.F.R. §2.80 (1990)); current provision found at (9 C.F.R. § 2.79(a) (1994)).

2. The primary enclosures did not contain litter to absorb and cover excreta. (9 C.F.R. §§ 3.11(b), 3.12(e) (1990)); current provisions found at (9 C.F.R. §§ 3.13(d), 3.14(a) (9) (1994)).

VIII

On July 10, 1990, respondent accepted for transportation and transported in commerce eight live dogs for shipper Sno Peke Kennel from Walnut, Iowa to Pasadena, California in willful violation of section 2.100(b) of the regulations (9 C.F.R. §2.100(b)) and the standards specified below:

1. The primary enclosures of the dogs were not marked with the words "Live Animal" nor with arrows or other markings indicating the correct upright position of the containers. (9 C.F.R. §§ 3.11(b), 3.12(f) (1990)); current provisions found at 9 C.F.R. §§ 3.13(d), 3.14((a) (6) (1994)).

2. The holding area where the dogs were placed had an air temperature which exceeded 85 degrees Fahrenheit. (9 C.F.R. § 3.16 (1990)); current provision found at 9 C.F.R. § 3.18 (1994).

IX

On August 22, 1990, respondent accepted for transportation and transported in commerce for shipper Doctor Pet Center one live dog from Boston, Massachusetts to Omaha, Nebraska. Feed and water instructions were not affixed to the outside of the primary enclosure, in willful violation of section 2.100(b) of the regulations and section 3.14 of the standards. (9 C.F.R. § 3.14(d) (1990)); current provision found at 9 C.F.R. § 3.13(c) (1994).

X

On September 18, 1990, respondent accepted for transportation and transported in commerce for shipper Ben Hill one live dog from Ontario, Canada to Oakland, California. The primary enclosure used to transport the dog did not contain absorbent litter and was not properly cleaned and sanitized, in willful violation of section 2.100(b) of the regulations and sections 3.11(b) and 3.12(e) of the standards. (9 C.F.R. §§ 3.11(b), 3.12(e)) (1990)); current provisions found at 9 C.F.R §§ 3.13(d), 3.14 (1994).

XI

On April 24, 1991, respondent accepted for transportation and transported in commerce for shipper Elizabeth Masters, two live cats in willful violation of section 2.100(b) of the regulations (9 C.F.R. § 2.100(b)) and the standards specified below:

1. Respondent failed to provide food and water, as required. (9 C.F.R. § 3.14(a) (1991)); current provision found at §3.16(a) (1994).

2. Respondent failed to maintain a designated holding area for the animals and they were instead commingled with inanimate cargo. (9 C.F.R. § 3.16) (1991)); current provision found at §3.18 (a) & (b) (1994).

WHEREFORE, it is hereby ordered that for the purpose of determining whether the respondent has in fact willfully violated the regulations and standards issued under the Act, this complaint shall be served upon the respondent. The respondent 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 complaint.

The Animal and Plant Health Inspection Service requests:

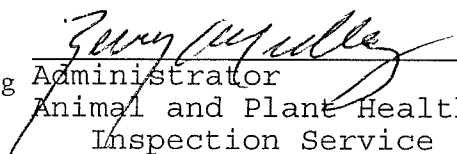
1. That unless the respondent fails to file an answer within the time allowed therefor, or files an answer admitting all the material allegations of this complaint, this proceeding be set for oral hearing in conformity with the Rules of Practice governing proceedings under the Act; and

2. That such order or orders be issued as are authorized by the Act and warranted under the circumstances, including an order:

(a) Requiring the respondent to cease and desist from violating the Act and the regulations and standards issued thereunder; and

(b) Assessing civil penalties against the respondent in accordance with section 19 of the Act (7 U.S.C. § 2149).

Done at Washington, D.C.
this 19th day of October, 1994


Acting Administrator
Animal and Plant Health
Inspection Service

DENISE Y. HANSBERRY
Attorney for Complainant
Office of the General Counsel
United States Department of
Agriculture
Washington, D.C. 20250-1400
Telephone (202) 720-4977