



CITY OF
PORTLAND, OREGON

HEARINGS OFFICE

1900 S.W. 4th Avenue, Room 3100
Portland, Oregon 97201
Telephone: (503) 823-7307
FAX: (503) 823-4347
TDD (503) 823-6868
www.portlandonline.com/auditor/hearings

HEARINGS OFFICER'S ORDER

TriMet vs. Jahara Castillo

CASE NO. 3090035
(TriMet Exclusion Number 146554)

HEARING DATE: February 24, 2009

APPEARANCES:

None

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Timelines: The Hearings Officer finds the following concerning the Notice of Exclusion being issued:

TriMet issued the Notice of Exclusion to Ms. Jahara Castillo on February 10, 2009. The case was forwarded to the City of Portland Hearings Office on February 12, 2009. The Hearings Office mailed a hearing notice to the parties on February 13, 2009, within the time prescribed in the TriMet Code. The notice contained the required information concerning Ms. Castillo's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Ms. Castillo when she was excluded. The notice did reference the violating conduct/applicable code provision.

Stays: The exclusion was subject to an automatic stay upon being issued.

Mitigating and/or Aggravating Factors: The Hearings Officer finds no mitigating or aggravating factors existed when the Notice of Exclusion was issued.

Probability that the excluded individual engaged in the conduct supporting the exclusion: Ms. Castillo was mailed a Notice of Hearing on February 13, 2009. The Notice was not returned by the U.S. Mail Service. Ms. Castillo, through her mother, contacted the Hearings Office on the date of the hearing and asked to have the hearing reset to another date/time. The Hearings Officer (see Notice of Hearing – Exhibit 6) requires that requests for rescheduling hearings be submitted in writing by noon the day prior to the scheduled hearing date. The Hearings Officer will, upon a showing of an emergency, consider granting a late request to reschedule. In this case Ms. Castillo's mother did not provide information that a true emergency existed, and did not submit the request for reschedule to the Hearings Office in writing. The Hearings Officer denied the request to reschedule made by Ms. Castillo's mother. No person appeared on behalf of TriMet. The Hearings Officer makes this decision based upon the exhibits admitted into the evidentiary record (Exhibits 1 through and including 7).

Exhibit 3 is a copy of the Notice of Exclusion issued to Ms. Castillo on February 10, 2009. Exhibit 4 is a copy of an affidavit prepared by the police officer who excluded Ms. Castillo on February 10, 2009. The affidavit states the following:

“R/C to Holladay Park/Lloyd Center T.S. regarding a group of M/B teens getting ready to fight. When we arrived there was no fight but there was a large crowd of M/B and F/B hanging out on the eastbound platform. A red line train pulled up and subject who was part of the group didn’t get on the train. The blue line pulled up next and subject boarded the train. Subject then got off. I asked subject why she didn’t leave and she said, ‘I’m waiting for a friend.’ This platform is posted for max transit use. Subject was excluded.”

The Hearings Officer finds that the affidavit prepared by the police officer is credible evidence. There is no evidence in the record to dispute the accuracy of the police officer’s affidavit statements. Therefore, the Hearings Officer finds that the officer’s affidavit accurately reflects the events leading up to the issuance of the Notice of Exclusion issued to Ms. Castillo on February 10, 2009. The Hearings Officer finds that it is more probable than not that Ms. Castillo did utilize the Holladay Park/Lloyd Center Transit platform, which was posted with signs indicating “non transit use is prohibited,” for non-transit purposes (waiting for a friend). The Hearings Officer finds that the Notice of Exclusion issued to Ms. Jahara Castillo on February 10, 2009 is valid.

Special Exceptions: The Hearings Officer finds there is no evidence in the record to suggest that Ms. Castillo is disabled, transit dependent, or that the exclusion is based upon expressive conduct or exercising religious opinion protected by the United States or Oregon Constitutions. If Ms. Castillo believes that she is transit dependent or disabled she may submit, in writing to the Hearings Office, a request for a “Qualified Exclusion.” A Qualified Exclusion permits a transit dependent person to utilize, on a limited basis, TriMet property and vehicles. To be considered for a Qualified Exclusion the writing submitted to the Hearings Office must include at least the following information:

- Why you feel you are transit dependent (i.e. no driver’s license, no family or friends available to drive you to your desired locations) or disabled
- Residence address
- Address for all locations that are necessary to use TriMet
- Reasons trips are necessary (e.g., travel to and from medical and legal appointments, school or training classes, place(s) of employment, obtaining food, clothing and necessary household items, or for accessing any critical services)
- Days of week and time during the days when trips are expected to be made and the particular bus line or Max line #.

The Hearings Officer will make a determination, based upon the information supplied, whether or not Ms. Castillo is transit dependent and which trips, if any, are trips of necessity.

ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer sustains the Notice of Exclusion issued to Ms. Jahara Castillo on February 10, 2009.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on March 2, 2009, and shall conclude on March 30, 2009 at 5:00 p.m.

3. Scope of the Exclusion:

The scope of the exclusion shall be as described in the Notice of Exclusion.

4. This order has been mailed to the parties on February 25, 2009, not more than five (5) business days following the hearing, and will become final on March 2, 2009, three (3) business days following the order being mailed.

5. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: February 25, 2009



Gregory J. Frank, Hearings Officer

GJF: gj/cb

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal Form page 2	Turner, Anna	Received
2	TriMet Fare Inspection System print out	Turner, Anna	Received
3	Notice of Exclusion	Turner, Anna	Received
4	Issuing Person's Affidavit	Turner, Anna	Received
5	Mailing list	Hearings Office	Received
6	Hearing notice	Hearings Office	Received
7	Statement of Rights	Hearings Office	Received