



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. Aaron William Drago

CASE NO. 3090281
(TriMet Exclusion Number 153760)

HEARING DATE: July 14, 2009

APPEARANCES:

Supervisor Thomas Bernardts, for TriMet

Excluded Party did not appear

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 Mr. Aaron William Drago on June 29, 2009. The case was forwarded to the City of Portland Hearings Office on July 8, 2009. The Hearings Office mailed a hearing notice to the parties on July 8, 2009, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Drago's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Drago when he 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: Mr. Drago was mailed a Notice of Hearing on July 8, 2009. The Notice was not returned by the U.S. Mail Service and Mr. Drago did not contact the Hearings Office prior to the hearing requesting that the hearing be rescheduled. Mr. Drago did not appear at the hearing. Rail Inspector Bernardts appeared and testified on behalf of TriMet. The Hearings Officer makes this decision based upon the testimony of Inspector Bernardts and the exhibits admitted into the evidentiary record (Exhibits 1 through and including 6).

Inspector Bernardts testified that on June 29, 2009, he was at the westbound platform of the PGE Park station when a Max train arrived. Inspector Bernardts stated that he stepped aboard the train and made contact with Mr.

Drago. Inspector Bernards stated that Mr. Drago was unable to produce proof that he had purchased valid fare. Inspector Bernards noted that the PGE Park station is outside Fareless Square and valid proof of fare is required at the PGE Park station.

The Hearings Officer finds, based upon the evidence in the record, that it is more probable than not that Mr. Drago, on June 29, 2009, did not have in his possession proof of purchase of valid fare when arriving at the PGE Park station. The Hearings Officer finds it more probable than not that on June 29, 2009, Mr. Drago violated TMC 29.15 (fare violation). The Hearings Officer finds that the Notice of Exclusion issued to Mr. Aaron William Drago on June 29, 2009 is valid.

Special Exceptions: The Hearings Officer finds there is no evidence in the record to suggest that Mr. Drago 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.

ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer sustains the Notice of Exclusion issued to Mr. Aaron William Drago on June 29, 2009.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on July 20, 2009, and shall conclude on August 15, 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 July 15, 2009, not more than five (5) business days following the hearing, and will become final on July 20, 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: July 15, 2009



Gregory J. Frank, Hearings Officer

GJF:gj/rs

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 | Mailing list | Hearings Office | Received |
| 5 | Hearing notice | Hearings Office | Received |
| 6 | Statement of Rights | Hearings Office | Received |