



CITY OF
PORTLAND, OREGON
HEARINGS OFFICE

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HEARINGS OFFICER'S ORDER

TriMet vs. Belinda Jackson

CASE NO. 3090326
(TriMet Exclusion Number 157990)

HEARING DATE: August 18, 2009

APPEARANCES:

Ms. Belinda Jackson, Excluded Party

Mr. Erik Van Hagen, Attorney for TriMet

HEARINGS OFFICER: Mr. Ian Simpson

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. Belinda Jackson on August 3, 2009. The case was forwarded to the City of Portland Hearings Office on August 4, 2009. The Hearings Office mailed a hearing notice to the parties on August 4, 2009, within the time prescribed in the TriMet Code. The notice contained the required information concerning Ms. Jackson's rights in the hearing process. The hearing was rescheduled and a new hearing notice was mailed to the parties on August 6, 2009 with an Interim Order extending the stay on the exclusion.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Ms. Jackson when she was excluded. The notice referenced 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: The Hearings Officer makes this decision based upon the testimony of Ms. Jackson and Officer Harvey and the exhibits received into the evidentiary record (Exhibits 1 through and including 15).

Mr. Van Hagen, TriMet general counsel, presented TriMet's case. Officer Harvey's affidavit and testimony indicated in relevant part that on August 3, 2009, he responded to the Rose Quarter Transit Station regarding threats. The officer arrived and spoke with a woman who said that she and her granddaughter got on the train at the Lloyd Center and asked a woman (Ms. Jackson) if they could sit next to her. The woman said that Ms.

Jackson told her that she would be endangering the child if she sat next to Ms. Jackson. The woman then said that Ms. Jackson started yelling at her, threatening to call DHS on her for endangering the child, and Ms. Jackson then told the woman that she would kill the child.

Officer Harvey then contacted Ms. Jackson and asked her what happened on the train. Ms. Jackson told the officer that the woman referred to earlier got on the train and asked Ms. Jackson if she and her child could sit next to Ms. Jackson. Ms. Jackson said that she knew the woman and child were planted by TriMet to get Ms. Jackson into a fight. Ms. Jackson told the officer that she had a lawsuit against TriMet, and that TriMet was the only one who would benefit from her being involved in a fight on the Max. She told the officer that normal people did not ask if they could sit next to a person on the train; they just sit down.

Officer Harvey testified that Ms. Jackson told the officer that she had told the woman that she could not sit next to Ms. Jackson or the woman would be endangering the child. When the woman sat down next to Ms. Jackson, she told the woman that Ms. Jackson would call DHS since the woman was trying to start a fight with her. Ms. Jackson told Officer Harvey that they began arguing and Ms. Jackson then walked away. Ms. Jackson told the officer that the woman got up and followed her and argued with her, saying falsely that Ms. Jackson had threatened to kill the child.

Officer Harvey then testified that he spoke with Officer Hawkins, who had been talking with other persons related to the incident. Officer Harvey told Officer Hawkins what Ms. Jackson told him, and Officer Hawkins issued Ms. Jackson a Notice of Exclusion. Ms. Jackson was excluded for violating TMC 28.15D Prohibited Risks to District Transit System Security and Order, subsection Threats.

Ms. Jackson testified that the woman she encountered on the train with the child was Ms. Gallindo. Ms. Jackson provided a photograph which she said was of Ms. Gallindo, taken by her on the Max platform after the incident. Officer Harvey stated that the photograph was probably of Ms. Gallindo. The Hearings Officer found that the photograph was probably of Ms. Gallindo, but found that it did not add any relevant information. Ms. Jackson stated that Ms. Gallindo had become hostile on the train and that Ms. Jackson did not yell at her. Ms. Jackson stated that she denied telling Ms. Gallindo that she would kill the child. Ms. Jackson stated that Officers Harvey and Hawkins were intentionally trying to provoke an incident with Ms. Jackson so that it would negatively affect her lawsuit against TriMet.

Once both parties stated that they were finished presenting testimony, the Hearings Officer asked Mr. Van Hagen if TMC 28.15D Prohibited Risks to District Transit System Security and Order subsection Threats, was the correct violation indicated in the Notice of Exclusion. The Hearings Officer told Mr. Van Hagen that the TriMet code required that the notice indicate what violation the excluded party's conduct violated. The Hearings Officer stated that it appeared to the Hearings Officer that the Threats subsection only applied to a person making threats against TriMet facilities or TriMet personnel.

The Hearings Officer finds that TMC 28.15D Prohibited Risks to District Transit System Security and Order subsection Threats reads: (8) Threats: No person may utter a threat to cause damage to a District Vehicle or other District property, or state a threat to cause disruption to District operations through the use of a bomb, explosive, or any other destructive device or weapon, or release of any harmful substance, while on a District Vehicle or other District property; or state a threat of physical harm to a peace officer or District personnel acting in the course of employment.

Mr. Van Hagen agreed with the Hearings Officer that Threats was not the appropriate subsection. Mr. Van Hagen suggested that Harassment/Intimidation was the correct subsection. He stated that since the category TMC 28.15D Prohibited Risks to District Transit System Security and Order was indicated in the Notice of Exclusion, it could be inferred from the facts of the case that Harassment/Intimidation was the relevant subsection. Mr. Van Hagen suggested that this was sufficient to satisfy TriMet Code requirements.

The Hearings Officer found that the purpose of the requirement that the correct offense be indicated in the Notice of Exclusion was so that the excluded party knew what offense they were alleged to have violated. The Hearing Officer found that indicating the wrong offense, even if the correct category of offenses was indicated, was not sufficient to satisfy TriMet requirements. Therefore, the Hearings Officer finds that the Notice of Exclusion issued to Ms. Jackson on August 3, 2009 was invalid.

ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer sets aside the Notice of Exclusion issued to Ms. Belinda Jackson on August 3, 2009.

2. This order has been mailed to the parties on August 20, 2009, not more than five (5) business days following the hearing, and will become final on August 25, 2009, three (3) business days following the order being mailed.
3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: August 20, 2009


 Ian Simpson, Hearings Officer

IS: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	Special report (1 of 2, 2 pages)	Turner, Anna	Received
5	Special report (2 of 2, 2 pages)	Turner, Anna	Received
6	Mailing list	Hearings Office	Received
7	Hearing notice	Hearings Office	Received
8	Statement of Rights	Hearings Office	Received
9	Request to reschedule	Hawkins, Officer Rob	Received
10	8/5/09 request to reschedule	Van Hagen, Erik	Received
11	Rescheduled Hearing Notice	Hearings Office	Received
12	Fax requesting Officer Harvey to attend hearing	Van Hagen, Erik	Received
13	8/7/09 letter with attachment	Jackson, Belinda	Received
13a	6/19/09 E-mail	Jackson, Belinda	Received
14	Document Acknowledgement letter	Hearings Office	Received
15	Photo	Jackson, Belinda	Received