



CITY OF
PORTLAND, OREGON
OFFICE OF THE CITY AUDITOR
Hearings Office

LaVonne Griffin-Valade, City Auditor
1900 SW 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. Rance C. Spruill

CASE NO. 3100012
(TriMet Exclusion Number 139091)

HEARING DATE: January 28, 2010

APPEARANCES:

Mr. Rance C. Spruill, Excluded Party

Supervisor Wayne Upton, for TriMet

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. Rance C. Spruill on January 12, 2010. The case was forwarded to the City of Portland Hearings Office on January 14, 2010. The Hearings Office mailed a hearing notice to the parties on January 15, 2010, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Spruill's rights in the hearing process. The hearing was rescheduled and a new hearing notice was mailed on January 21, 2010.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Spruill 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 that Mr. Spruill's conduct on January 12, 2010 created a situation where a bus driver expressed concern for the safe operation of a bus.

Probability that the excluded individual engaged in the conduct supporting the exclusion: Mr. Spruill appeared at the hearing and testified on his own behalf. TriMet Road Supervisor Upton appeared and testified on behalf of TriMet. The Hearings Officer makes this decision based upon the testimony of Mr. Spruill and Supervisor Upton and the documents admitted into the evidentiary record (Exhibits 1 through and including 8).

Supervisor Upton testified that on January 12, 2010, at approximately 7:05 p.m., he received a call that a driver on a bus had reported an abusive passenger aboard his bus. Supervisor Upton arrived after police had arrived at the scene. Supervisor Upton stated that he talked with the bus driver, who had reported the abusive passenger, and the driver informed him that Mr. Spruill was upset and had said something to him (to the bus driver) that had upset the driver to the extent that the driver felt that it was unsafe to continue to operate the bus. Supervisor Upton stated that the bus driver had requested Mr. Spruill to depart the bus and Mr. Spruill had initially refused. Supervisor Upton testified that when he contacted Mr. Spruill, at the scene, he detected an odor of alcohol. Upon cross-examination by Mr. Spruill, Supervisor Upton stated that the bus driver related to him that Mr. Spruill had called the bus driver a "peckerwood." Upon cross-examination, Supervisor Upton stated that the bus driver told him that after Mr. Spruill called him a "peckerwood," Mr. Spruill reseated himself further back in the bus.

Mr. Spruill testified that prior to getting on the bus and confronting the bus driver, he had been passed by another bus; the earlier bus did not stop for him at the bus stop. Mr. Spruill stated that when the bus that he boarded approached him, he had to step out in the street to get the driver's attention. Mr. Spruill stated that he did board the bus and took a seat. Mr. Spruill stated that shortly thereafter, he got up from his seat and walked up to a location close to the driver and began asking the driver questions; i.e. how long he had worked for TriMet and how long he had been driving the route he was driving on January 12, 2010. Mr. Spruill stated that after the driver answered his questions he got up, calmly and in a low voice, stated to the driver "peckerwood" and walked towards the rear of the bus and sat down. Mr. Spruill stated the driver proceeded along the route, past one or two stops, and then stopped, got on his phone and opened all of the bus doors. Mr. Spruill stated that he was not asked to deboard the bus. Mr. Spruill testified that he did not disobey any orders to get off of the bus.

Mr. Spruill, in response to a question, replied that his state of mind, while on the bus, was "ticked." He stated that he was upset that the earlier bus had passed him by and that he had to step out into the roadway to get the attention of the bus that he actually boarded. In response to a question from the Hearings Officer, Mr. Spruill stated that when he called the bus driver a "peckerwood" he did so "mildly."

Mr. Spruill received a Notice of Exclusion on January 12, 2010 for allegedly violating TMC 28.15 D(6) – Harassment and Intimidation. For a person to violate TMC 28.15 D(6) a person, while on a TriMet vehicle, must have engaged in a course of conduct that is threatening or disruptive or conduct which places another person in reasonable fear of imminent physical harm.

The Hearings Officer finds the testimony of both Mr. Spruill and Supervisor Upton to be generally consistent. In particular, the testimony of both Mr. Spruill and Supervisor Upton was in agreement that Mr. Spruill, after boarding the bus, approached the driver, asked the driver questions related to the driver's experience and tenure, and then called the bus driver a "peckerwood." In areas where the testimony of Mr. Spruill and Supervisor Upton did not agree, the Hearings Officer finds that the testimony of Supervisor Upton, even though based in part upon hearsay evidence, more credible than the testimony of Mr. Spruill.

The Hearings Officer finds, based upon the testimony of Mr. Spruill, that when he boarded the bus he was upset ("ticked"). The Hearings Officer finds that Mr. Spruill did approach the driver, while on the bus, and question him about his qualifications/experience/tenure, and when not satisfied with the driver's responses, Mr. Spruill called the driver a "peckerwood." The Hearings Officer finds that the interaction between Mr. Spruill and the driver reasonably could be perceived by the bus driver as confrontational. The Hearings Officer finds that the combination of questions asked by Mr. Spruill and Mr. Spruill calling the driver a "peckerwood" could be reasonably perceived by the driver as threatening behavior; placing the driver and other passengers at an imminent safety risk. The Hearings Officer finds it more probable than not that on January 12, 2010, Mr. Spruill placed the bus driver in reasonable fear of imminent physical harm. The Hearings Officer finds, on January 12, 2010, it is more probable than not that Mr. Spruill did violate TMC 28.15 D(6).

The Hearings Officer finds that the Notice of Exclusion issued to Mr. Rance C. Spruill on January 12, 2010 is valid.

Special Exceptions: The Hearings Officer finds Mr. Spruill is transit dependent. The Hearings Officer finds that Mr. Spruill needs access to TriMet bus line #12 to travel to/from his residence and work on Tuesday, Thursday and Friday between 5:30 a.m. and 7:30 p.m. The Hearings Officer finds that Mr. Spruill needs access to TriMet bus lines #6, #17, and #20 on Monday, Wednesday, Thursday and Friday between 10:00 a.m. and 6:00 p.m. to attend the Cascadia Behavior Healthcare Garlington Center. The Hearings Officer finds that Mr. Spruill needs access to TriMet bus line #4 on Friday between 1:00 p.m. and 9:30 p.m. to provide assistance to his father.

ORDER AND DETERMINATION:

1. **Validity of the Notice of Exclusion:**

The Hearings Officer modifies the Notice of Exclusion issued to Mr. Rance C. Spruill on January 12, 2010.

2. **Length of the Exclusion:**

The exclusion shall become effective with this Order, on February 4, 2010, and shall conclude on April 20, 2010 at 5:00 p.m.

3. **Scope of the Exclusion:**

Mr. Spruill shall have access to TriMet bus lines as follows:

- #12 on Tuesday, Thursday and Friday between 5:30 a.m. and 7:30 p.m. (travel to/from work)
- #6, #17, and #20 on Monday, Wednesday, Thursday and Friday between 10:00 a.m. and 6:00 p.m. (travel to/from Cascadia Behavior Healthcare Garlington Center)
- #4 on Friday between 1:00 p.m. and 9:30 p.m. (travel to/from father's residence)

4. This order has been mailed to the parties on January 29, 2010, not more than five (5) business days following the hearing, and will become final on February 4, 2010.

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

Dated: January 29, 2010


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
7	Request to reschedule	Spruill, Rance C.	Received
8	Hearing Notice	Hearings Office	Received