



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

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HEARINGS OFFICER'S ORDER

TriMet vs. Gary P. Lore

CASE NO. 3100073
(TriMet Exclusion Number 165201)

HEARING DATE: March 9, 2010

APPEARANCES:

Mr. Gary Lore, Excluded Party

TriMet did not appear

HEARINGS OFFICER: 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. Gary P. Lore on February 12, 2010. The case was forwarded to the City of Portland Hearings Office on February 23, 2010. The Hearings Office mailed a hearing notice to the parties on February 25, 2010, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Lore's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Lore 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.

Probability that the excluded individual engaged in the conduct supporting the exclusion: Mr. Lore appeared at the hearing and testified on his own behalf. No person appeared at the hearing to testify on behalf of TriMet. The Hearings Officer makes this decision based upon the testimony of Mr. Lore and the documents admitted into the evidentiary record (Exhibits 1 through and including 6).

Mr. Lore testified that on February 12, 2010, he was downtown and did consume one or more alcoholic beverages. Mr. Lore stated that he rode a TriMet Max train to the Beaverton Transit Center. He departed at the Beaverton Transit Center because he was not sure if he was going to continue home or go to another person's residence. Mr. Lore stated that he was wearing corduroy cargo pants with boxer shorts underneath the cargo pants. Mr. Lore stated that while he was at the Beaverton Transit Center his cargo pants, which fit him very

loosely, did fall down. Mr. Lore stated that he immediately pulled the cargo pants back up. Mr. Lore stated that his boxer shorts did not fall down and that his private body parts were never exposed.

Mr. Levingston, a TriMet representative, submitted a copy of the Notice of Exclusion issued to Mr. Lore (Exhibit 3). Mr. Levingston also submitted an affidavit (Exhibit 3). Mr. Levingston's affidavit states:

"Mr. Lore was in the bus shelter (#67) with his pants pulled down to his ankles. A female customer stated he was exposing himself. A bus driver also said he saw the same thing. Mr. Lore was intoxicated."

Mr. Lore received a Notice of Exclusion issued on February 12, 2010 for allegedly violating TMC 28.15 D (Harassment and Intimidation). A person violates TMC 28.15 D (Harassment and Intimidation) if the person, while on TriMet property, engages in harassment and intimidation through a course of conduct that is violent, threatening or disruptive, or conduct that is likely to provide a violent response or places another in reasonable fear of imminent physical harm.

The Hearings Officer finds that the testimony of Mr. Lore is credible. The Hearings Officer finds it is unclear if Mr. Levingston personally observed any of Mr. Lore's conduct related to his pants being down. The Hearings Officer finds that Mr. Lore's pants did fall down because they fit him loosely, but Mr. Lore's boxer shorts remained pulled up. The Hearings Officer found that because Mr. Levingston, the bus driver or female customer were not present and did not testify at the hearing, Mr. Lore's version of the events were at least equally plausible as Mr. Levingston's version of the events. TriMet has the burden of proof to show that it is more probable than not that the alleged events did occur as described by Mr. Levingston. The Hearings Officer finds that TriMet did not carry its burden. The Hearings Officer cannot find, based upon the evidence in the record, that Mr. Lore's conduct was violent, threatening or disruptive. The Hearings Officer finds that the Notice of Exclusion issued to Mr. Gary P. Lore on February 12, 2010 is not valid.

ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer sets aside the Notice of Exclusion issued to Mr. Gary P. Lore on February 12, 2010.

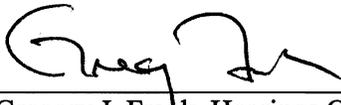
2. Length of the Exclusion:

The exclusion shall not become effective.

3. This order has been mailed to the parties on March 12, 2010, not more than five (5) business days following the hearing, and will become final on March 17, 2010, three (3) business days following the order being mailed.

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

Dated: March 12, 2010



Gregory J. Frank, Hearings Officer

GJF:rs

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal form page 2	Turner, Anna	Received
2	TriMet Fare Inspection System printout	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