



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

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HEARINGS OFFICER'S ORDER

TriMet vs. Christopher Michael Wishnia

CASE NO. 3100203
(TriMet Exclusion Number 157720)

HEARING DATE: June 10, 2010

APPEARANCES:

Chris M. Wishnia, Excluded Party

No Appearance by 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. Christopher Michael Wishnia on May 19, 2010. The case was forwarded to the City of Portland Hearings Office on May 20, 2010. The Hearings Office mailed a hearing notice to the parties on May 24, 2010, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Wishnia's rights in the hearing process. The hearing was rescheduled and a new hearing notice and Interim Order extending the stay on the exclusion were mailed on May 28, 2010.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Wishnia 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. Wishnia 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. Wishnia and the documents admitted into the evidentiary record (Exhibits 1 through and including 9).

Mr. Wishnia received a TriMet Notice of Exclusion for allegedly violating TMC 28.15 D. A person violates TMC 28.15 D (Interference/Trespass on Right-of-Way) if the person enters upon or remains upon the right-of-way of the light rail or commuter transit line so as to create a hazard to that person or interfere with the passage of a District Vehicle. A person may also violate TMC 28.15 D (Interference/Trespass on Right-of-Way) if the person

fails to obey a TriMet authorized posted directive or prohibition pertaining to entering, crossing or traveling upon the right-of-way.

Mr. Wishnia testified that that he lives at 122nd at East Burnside. Mr. Wishnia stated that on the date he received the Notice of Exclusion he was walking from his residence to board a Max train. Mr. Wishnia stated that when he arrived at the 122nd/Burnside cross walk he observed a train coming and walked, against the crosswalk light, and proceeded to the center area. Mr. Wishnia stated that he then saw a police officer in a police vehicle who said that he wanted to "speak to you." Mr. Wishnia was not sure if the police officer was talking to him or another person nearby. Mr. Wishnia stated he believed that the officer "waved him on" and so he proceeded to board a Max train. Mr. Wishnia stated police officers were at the next Max stop and he was removed from the train. Mr. Wishnia stated he "did not stand close to a Max train" so as to create any danger to himself or the train.

The police officer who issued the Notice of Exclusion to Mr. Wishnia submitted a written statement (Exhibit 4). The officer stated, in Exhibit 4, the following:

"I observed the subject walk NB against pedestrian light from SW corner of 122nd and Burnside and stand on the tracks within 2 feet of a Max train that was coming into the WB platform. The subject then ignored (od didn't hear) orders to remain and talk with us and boarded train. We caught up with him at 102nd and removed him from the train."

The Hearings Officer finds that generally the testimony of Mr. Wishnia and the police officer's written statement are in agreement. Mr. Wishnia, however, did state that he disagreed with the police officer's statement regarding standing within 2 feet of a Max train. Mr. Wishnia's testimony was that he was never in a location that presented a safety risk to himself or the train.

The Hearings Officer notes that the police officer statement does not reference any prohibitive signage. Therefore, the Hearings finds that Mr. Wishnia did not violate TMC 28.15 D. by entering a light rail right-of-way by disregarding prohibitive signage. The Hearings Officer finds that the police officer's statement does not sufficiently describe how Mr. Wishnia's actions, on May 19, 2010, created a safety risk to Mr. Wishnia or interfered with the passage of a District Vehicle. The Hearings Officer finds that the police officer's statement does not provide sufficient evidence for the Hearings Officer to find a violation of TMC 28.15 D. The Hearings Officer finds that TriMet did not carry its burden of proof in this case. The Hearings Officer finds the Notice of Exclusion issued to Mr. Christopher Michael Wishnia on May 19, 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. Christopher Michael Wishnia on May 19, 2010.

2. Length of the Exclusion:

The exclusion shall not become effective.

3. This order has been mailed to the parties on June 11, 2010, not more than five (5) business days following the hearing, and will become final on June 17, 2010.

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

Dated: June 11, 2010



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
8	Request to reschedule	Douglas, Officer Dan	Received
9	Hearing Notice	Hearings Office	Received