



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. Clifford Gregory Nelson-Simmons

CASE NO. 3100211
(TriMet Exclusion Number 162248)

HEARING DATE: June 24, 2010

APPEARANCES:

Mr. Clifford Gregory Nelson-Simmons, Excluded Party

Officer Danny Hill, for TriMet

HEARINGS OFFICER: Ms. Christina A. Austin-Smith

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. Clifford Gregory Nelson-Simmons on May 13, 2010. The case was forwarded to the City of Portland Hearings Office on May 28, 2010. The Hearings Office mailed a hearing notice to the parties on June 1, 2010, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Nelson-Simmons's rights in the hearing process. A rescheduled hearing notice and Interim Order was mailed to the parties on June 10, 2010.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Nelson-Simmons when he was excluded. The notice referenced the violating conduct/applicable code provision.

Stays: The exclusion was subject to an automatic stay upon being issued and was extended at the Hearings Officer's direction via an Interim Order dated June 10, 2010.

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: TriMet has the burden to demonstrate that it is more probable than not that the conduct forming the basis to issue the Notice of Exclusion occurred. Mr. Nelson-Simmons appeared at the hearing and testified on his own behalf. Mr. Helmar Lochmann, Department of Human Services and Mr. Nelson-Simmons' legal custodian also appeared and assisted Mr. Nelson-Simmons. Officer Danny Hill and Officer Mike Danovich, Milwaukie Police Department, appeared and testified on

behalf of TriMet. The Hearings Officer makes this decision based upon the testimony of Mr. Nelson-Simmons, Officer Hill, Officer Danovich and the exhibits admitted, without objection, into the evidentiary record (Exhibits 1 through and including 11).

Mr. Nelson-Simmons testified that he was with his friend at a MAX station when an officer grabbed his friend and asked him to show his proof of fare. Mr. Nelson-Simmons testified that he said about the officers "they are being assholes." Mr. Nelson-Simmons stated he had a box cutter with him from his job, which he told the officers about upon questioning.

Officer Hill testified that on May 13, 2010, at the Clackamas Town Center Transit Center he and his partner were at the entrance of the platform, checking for proof of fares. He stated that Mr. Nelson-Simmons and a friend walked past the officers without slowing down to let them check their passes. Officer Hill testified that Mr. Nelson-Simmons became agitated, but after verifying the fares, the officers disengaged and moved on to check other passengers' fares on the platform. He stated that Mr. Nelson-Simmons continued to complain that the officers were harassing him and re-engaged the officers. Officer Hill testified per procedure in continuing the contact he asked Mr. Nelson-Simmons if he had any weapons on him, and Mr. Nelson-Simmons admitted he had a knife. Officer Hill described it as a box knife with a handle that folds and a sharp blade about 1 ½ inches long. Officer Hill stated that Mr. Nelson-Simmons remained agitated and refused to listen to the officers' demands as a crowd began to form. In the interest of public safety, Officer Hill stated he arrested Mr. Nelson-Simmons for interfering with public transportation.

Officer Danovich testified and confirmed Officer Hill's account of the incident. He stated that they were checking everyone's fare and did not single out Mr. Nelson-Simmons or his friend. He stated that Mr. Nelson-Simmons and his friend initially walked by too fast for them to adequately confirm proof of payment. Officer Danovich stated that Mr. Nelson-Simmons called them assholes and got upset, re-engaging the officers after they had moved on to other people.

Mr. Lochmann testified that Mr. Nelson-Simmons is disabled and because of his disability, has a hard time reading social cues, which tends to make him become louder and more argumentative in certain situations.

Officer Hill issued Mr. Nelson-Simmons a Notice of Exclusion on May 13, 2010, for violating TriMet Code 28.15D, Prohibited Risks to Transit System Security and Order, specifically subsection (2), Weapons. This section of the TriMet Code, in pertinent part, prohibits a person from bringing aboard a District Vehicle any knife (except a folding knife with a blade less than 3 ½ inches in length). In addition, if the weapon is otherwise permitted, this section prohibits a person from displaying or carrying a weapon in a manner which is likely to result in fear or alarm by other persons.

The Hearings Officer finds, based on the testimony at the hearing, that Mr. Nelson-Simmons was carrying a folding knife on TriMet property with a blade less than 1 ½ inches long. This knife appears to fit within the permissible standards described in the TriMet Code. While Mr. Nelson-Simmons did become agitated and disrespectful to the police officers after they checked his fare, the Hearings Officer does not find any evidence indicating Mr. Nelson-Simmons was displaying this knife or carrying it in a manner that was likely to result in fear or alarm to other persons. Mr. Nelson-Simmons indicated to the officers that he was carrying the knife after they asked. Accordingly, the Hearings Officer finds that the Notice of Exclusion issued to Mr. Nelson-Simmons on June 13, 2010, for carrying a prohibited weapon, 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. Clifford Gregory Nelson-Simmons on May 13, 2010.

2. Length of the Exclusion:

The exclusion shall not become effective.

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

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

Dated: June 29, 2010



Christina A. Austin-Smith, Hearings Officer

CAAS: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	Mailing list	Hearings Office	Received
5	Hearing notice	Hearings Office	Received
6	Statement of Rights	Hearings Office	Received
7	Letter (2 pgs)	Oregon Dept. of Human Services,	Received
8	Copy of Citation & Complaint (2 pgs)	Oregon Dept. of Human Services,	Received
9	Multnomah Co. Permanency Judgment (5 pgs)	Oregon Dept. of Human Services,	Received
10	Copy of Honored Citizen Card	Oregon Dept. of Human Services,	Received
11	Rescheduled hearing notice	Hearings Office	Received