



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

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HEARINGS OFFICER'S ORDER

TriMet vs. Justus O. Akwenuke

CASE NO. 3100234
(TriMet Exclusion Number 154652)

HEARING DATE: July 1, 2010

APPEARANCES:

Mr. Justus Akwenuke, Excluded Party

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. Justus O. Akwenuke on June 6, 2010. The case was forwarded to the City of Portland Hearings Office on June 18, 2010. The Hearings Office mailed a hearing notice to the parties on June 21, 2010, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Akwenuke's rights in the hearing process.

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

Mitigating and/or Aggravating Factors: The Hearings Officer finds the fact that Mr. Akwenuke had been previously warned about having the correct fare as an aggravating factor that 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. Akwenuke appeared and testified on his own behalf. No one appeared and testified on behalf of TriMet. The Hearings Officer makes this decision based upon the testimony of Mr. Akwenuke and also considered Exhibits 2 through and including 7, which the Hearings Officer find to be relevant and what a reasonable person would rely upon, therefore admitting them into the evidentiary record. The Hearings Officer sustained an objection by Mr. Akwenuke to admit Exhibit 1 because the photocopy of this exhibit was difficult to read. This exhibit was therefore not considered in arriving at this decision.

Mr. Akwenuke testified that he purchased a 2-zone MAX ticket at the airport on June 6, 2010 and submitted this ticket as evidence (Exhibit 7). Mr. Akwenuke testified that when he arrived at the Beaverton Transit Center, he had a fare inspector check his fare and was informed that his fare was not valid, that he should have purchased an all-zone fare for that trip. The inspector gave Mr. Akwenuke a verbal warning. Mr. Akwenuke testified that he then dropped off his luggage at home and got back onto the MAX to ride to Hillsboro to take some items to a friend, continuing to use the same ticket he purchased at the airport, Exhibit 7. Mr. Akwenuke later got back onto the MAX, using the same ticket. Mr. Akwenuke admitted throughout all of these travels he had not purchased a new fare, but was continuing to use the ticket he purchased at the airport, Exhibit 7, because it had not yet reached the 5:17 p.m. expiration date. Mr. Akwenuke testified he was again approached by fare inspectors. He stated that his ticket had just expired about five minutes prior to the inspector asking for his fare.

Supervisor Tom Bernards issued the exclusion to Mr. Akwenuke. He submitted a copy of the exclusion and a handwritten report at Exhibit 3. Supervisor Bernards writes: "Subject did not have correct fare while riding from BTC to STC. Subject had been previously verbally warned by another Rail Supervisor about not having the correct fare. The subject was told to purchase correct fare before attempting to return to the downtown area."

Supervisor Bernards issued Mr. Akwenuke a Notice of Exclusion on June 6, 2010, for violating TriMet Code 29.15A, riding a District Vehicle without paying the applicable fare. TriMet Code 29.15A states "it shall be unlawful for any person to occupy, ride in or use, any District Vehicle without paying the applicable fare."

The Hearings Officer finds, based on the testimony of Mr. Akwenuke and the evidence admitted into the record, that it is more probable than not that Mr. Akwenuke purchased a 2-zone ticket at the Portland airport on June 6, 2010. The Hearings Officer finds that Mr. Akwenuke first rode the train to Beaverton Transit Center, where he had his fare checked and was informed by an inspector that he had purchased a 2-zone ticket, but an all-zone ticket was required. The Hearings Officer finds that Mr. Akwenuke was given a verbal warning about purchasing the correct fare. The Hearings Officer also finds that Mr. Akwenuke, based on his own testimony, continued to ride the MAX using the same 2-zone ticket, traveling to Hillsboro and later toward the Sunset Transit Center. The Hearings Officer finds that Mr. Akwenuke improperly continued to use a 2-zone ticket, when an all-zone ticket was required, after having been warned by a fare inspector that he had purchased the wrong fare. The Hearings Officer finds Mr. Akwenuke had not violated the expiration time on his 2-zone ticket; rather he had not paid the proper all-zone ticket to cover all of his travels on that day. Accordingly, the Hearings Officer finds that the Notice of Exclusion was properly issued to Mr. Akwenuke on June 6, 2010, and is valid.

Special Exceptions: The Hearings Officer finds that Mr. Akwenuke is transit dependent and granted him a qualified exclusion to ride all TriMet buses, seven days a week, all hours of the day. Even though Mr. Akwenuke has been granted a qualified exclusion, he must still follow all TriMet laws/rules while on TriMet property/vehicles. Violation of TriMet laws/rules, while on TriMet property/vehicles, may subject Mr. Akwenuke during the term of this exclusion to being charged with the crime of Interfering with Public Transportation (ORS 166.116) or the crime of Criminal Trespass in the Second Degree (ORS 164.245).

ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer modifies the Notice of Exclusion issued to Mr. Justus Akwenuke on June 6, 2010.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on July 8, 2010, and shall conclude on August 7, 2010 at 5:00 p.m.

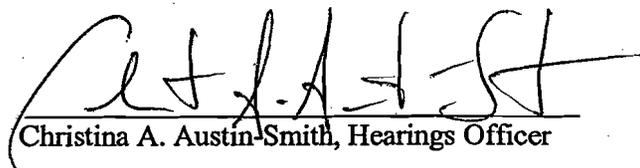
3. Scope of the Exclusion:

Mr. Akwenuke may continue to ride all TriMet buses, seven days a week, all hours of the day.

4. This order has been mailed to the parties on July 2, 2010, not more than five (5) business days following the hearing, and will become final on July 8, 2010.

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

Dated: July 2, 2010



Christina A. Austin-Smith, Hearings Officer

CAAS:cb

Enclosure

<u>Exhibit #</u>	<u>Description</u>	<u>Submitted by</u>	<u>Disposition</u>
1	Appeal form page 2	Turner, Anna	Rejected
2	Fare Inspection form	Turner, Anna	Received
3	Notice of Exclusion & Officer's Affidavit	Turner, Anna	Received
4	Hearing notice	Hearings Office	Received
5	Statement of Rights	Hearings Office	Received
6	Mailing list	Hearings Office	Received
7	TriMet fare ticket	Akwenuke, Justus O.	Received