



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. Frank Burley, Jr.

CASE NO. 3100239
(TriMet Exclusion Number 168703)

HEARING DATE: July 1, 2010

APPEARANCES:

Mr. Frank Burley, Jr., Excluded Party

TriMet did not appear

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. Frank Burley, Jr. on June 15, 2010. The case was forwarded to the City of Portland Hearings Office on June 24, 2010. The Hearings Office mailed a hearing notice to the parties on June 24, 2010, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Burley's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Burley 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 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. Burley appeared at the hearing 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. Burley and also considered Exhibits 1 and 3 through and including 7, which the Hearings Officer finds 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. Burley to admit Exhibit 2 because he had not previously received or reviewed this document. This exhibit was therefore not considered in arriving at this decision.

Mr. Burley testified that he got on the bus at Capitol Highway and was riding it downtown. He testified he was sitting three seats behind the driver and observed the driver speaking with another lady throughout the bus ride. Mr. Burley testified that when the bus arrived at 6th and Jefferson, everyone got off the bus except for him. He stated eventually the police arrived and took him off the bus. He denied any wrongdoing. Mr. Burley also submitted Exhibit 7, a letter from Mr. Joel Cox, a social worker, that indicates that Mr. Burley is on medication for mental illness. Mr. Cox explained that Mr. Burley suffers from side effects of this medication that include involuntary movements, or muscle contractions, which can generate constant movement in his legs and upper body. These movements were observed by the Hearings Officer throughout the hearing.

Officer Chris Watkins, Transit Police Division, issued the exclusion to Mr. Burley. Officer Watkins submitted a written report at Exhibit 3. In this report he writes: "Burley was lodged at MCDC for masturbating on board a Tri Met bus. Burley caused inconvenience from all passengers on bus because bus had to stop for police contact. Burley was seen putting both hands under his pants and placing his hands one on top of the other, like holding a baseball bat. Then Burley began thrusting his pelvis and squeezing his hands. This occurred when "cute girls" passed by."

Officer Watkins issued Mr. Burley a Notice of Exclusion on June 15, 2010, for violating TriMet Code 28.15C, engaging in criminal activity while in a District Station, specifically for violating ORS 166.116, Interfering with Public Transportation.

TriMet Code 28.15C prohibits individuals from engaging in "activity prohibited by the criminal laws of any state, county, or municipality, in which the criminal incident occurs, while on a District Vehicle or in or upon a District Station or District Parking Facility." The only section of ORS 166.116 that seems to apply in this case, and is presumably what the officer intended, is ORS 166.116(b), which states it is a crime to interfere with public transportation if a person, "intentionally or knowingly interferes with the provision or use of public transportation services by, among other things, interfering with the movement of, or access to, public transit vehicles."

The Hearings Officer finds that TriMet has not met its burden in this case. Exhibit 3 is the primary evidence listing the basis of the exclusion on the record. This report is written by Officer Watkins, who was not a witness to Mr. Burley's behavior on the bus, but is reporting what he was apparently told by a witness after arriving on the scene. When this evidence is weighed against the testimony of Mr. Burley, and the letter admitted about his medical condition at Exhibit 7, the preponderance of the evidence does not indicate any intentional or knowing interference by Mr. Burley with the use of public transportation.

Therefore the Hearings Officer finds insufficient evidence to support a violation of TriMet Code 28.15C and finds this exclusion invalid.

ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer sets aside the Notice of Exclusion issued to Mr. Frank Burley, Jr. on June 15, 2010.

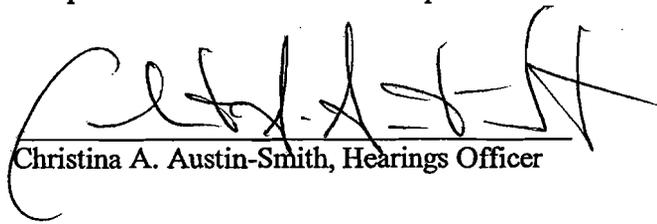
2. Length of the Exclusion:

The exclusion shall not become effective.

3. 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.

4. 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: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	Rejected
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 from Joel Cox, Luke-Dorf, Inc.	Burley, Frank	Received