



CITY OF

PORTLAND, OREGON

OFFICE OF THE CITY AUDITOR
Hearings Office

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HEARINGS OFFICER'S ORDER

TriMet vs. Brandon Robert Olson

CASE NO. 3100236
(TriMet Exclusion Number 186443)

HEARING DATE: July 1, 2010

APPEARANCES:

None

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. Brandon Robert Olson on June 11, 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. Olson's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Olson when he was excluded. The notice referenced the violating conduct/applicable code provision. On the notice, the officer who issued the exclusion erroneously circled a 60-day exclusion period. The appropriate exclusion period for the marked offense is 30 days. Given that the correct offense was marked, and that the exclusion period for that offense is a lesser penalty than the 60 days circled on the notice, the Hearings Officer finds that this inaccuracy does not result in any prejudice to Mr. Olson and the notice is still valid.

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. Olson failed to appear at the hearing and did not submit a written request to the Hearings Officer to reschedule the hearing. Mr. Olson did not contact the Hearings Office prior to the hearing via telephone, in person or fax. Mr. Olson did not present any evidence to contest the exclusion or the credibility/relevance of any

evidence. No one appeared and testified on behalf of TriMet. The Hearings Officer makes this decision solely based upon Exhibits 1 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.

Supervisor Jill Hall issued the exclusion to Mr. Olson. She submitted a written report of the incident (Exhibit 3) and a photo of the fence in issue (Exhibit 4). In Exhibit 3, Supervisor Halls writes: "While checking fares at Clackamas TC platform, I observed subject crossing over a Trimet fence. Subject was carrying a bike." She goes on to write: "Subject was very irate about being excluded for jumping over our fence. I took pictures of the fence. While subject did not do all the damage to the fence, every time someone goes over the fence it causes more damage. Subject indicated he goes over the fence all the time."

Supervisor Hall issued Mr. Olson a Notice of Exclusion on June 11, 2010, for violating TriMet Code 28.15B, Prohibited Misuse of District Transit System. Specifically, she indicated the subsection for Damaging/Defacing District Property. This section of the TriMet Code states, in pertinent part, that no person shall: "In any manner damage, destroy, interfere with, or obstruct in any manner, the property, services or facilities of the District," TMC 28.15B(10)(b).

The Hearings Officer finds, based on the written report of Supervisor Hall, which the Hearings Officer finds to be relevant and credible, that it is more probable than not that Mr. Olson did cross the fence pictured at Exhibit 4. The Hearings Officer finds the fence has been damaged and finds it more probable than not that Mr. Olson's actions on that day, or previous times going over the fence, did cause at least some amount of damage to the fence.

Therefore, the Hearings Officer finds that the Notice of Exclusion for damaging district property was properly issued to Mr. Olson on June 11, 2010, and is valid.

Special Exceptions: The Hearings Officer finds there is no evidence in the record to suggest that Mr. Brandon Robert Olson is disabled, transit dependent, or that the exclusion is based upon expressive conduct or exercising religious opinion protected by the United States or Oregon Constitutions.

ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer sustains the Notice of Exclusion issued to Mr. Brandon Robert Olson on June 11, 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.

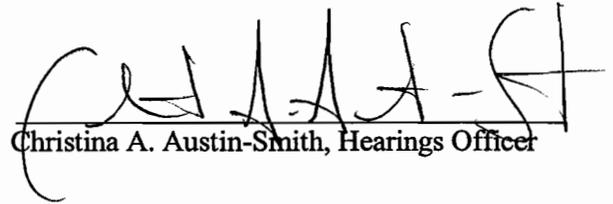
3. Scope of the Exclusion:

The scope of the exclusion shall be as described in the Notice of Exclusion.

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: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	Received
3	Notice of Exclusion	Turner, Anna	Received
4	Picture of fence	Turner, Anna	Received
5	Mailing list	Hearings Office	Received
6	Hearing notice	Hearings Office	Received
7	Statement of Rights	Hearings Office	Received

