



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

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HEARINGS OFFICER'S ORDER

TriMet vs. Gary D. Inman

CASE NO. 3100238
(TriMet Exclusion Number 124204)

HEARING DATE: July 1, 2010

APPEARANCES:

Mr. Gary D. Inman, 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. Gary D. Inman on June 23, 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. Inman's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Inman 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. Inman had a prior warning and citation for the same offense as aggravating factors 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. Inman 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. Inman and also considered Exhibits 1 through and including 6, which the Hearings Officer finds to be relevant and what a reasonable person would rely upon, therefore admitting them into the evidentiary record.

Mr. Inman testified that he had purchased a fare on his way to work, but it had expired when he was later riding on the MAX. He explained he did not have the extra money at the time to buy fare. Mr. Inman stated he wanted to take responsibility for his actions.

Officer Bergstrom, Hillsboro Police Department, issued the exclusion to Mr. Inman and provided a copy of his report of the incident at Exhibit 3. Officer Bergstrom wrote: "On 06-23-10, at approx 2025 hours I was riding an east bound blue line train from Elmonica to Merlo Max. I contacted a subject named Gary Inman and he did not have a fare. I asked Inman to exit the train at the Merlo Max station and I performed an R check on the Tri-Met security channel. I learned that Inman had a prior warning and a prior citation for no proof of payment."

Officer Bergstrom issued Mr. Inman a Notice of Exclusion on June 23, 2010, for violating TriMet Code 29.15B, riding a District Vehicle without carrying proof of payment. TriMet Code 29.15B states "it shall be unlawful for any person to occupy, ride in or use, any District Vehicle without carrying proof of fare payment."

The Hearings Officer finds, based on the admissions of Mr. Inman and the evidence admitted into the record, that it is more probable than not that Mr. Inman did not pay his fare to ride the MAX train on June 23, 2010, and was riding on a District Vehicle, specifically the MAX Blue Line, without carrying proof of payment. The Hearings Officer finds that the Notice of Exclusion was properly issued to Mr. Inman on June 23, 2010, and is valid.

Special Exceptions: The Hearings Officer finds that Mr. Inman relies on public transportation and needs access to TriMet Wednesday through Saturday to get to work. Therefore, the Hearings Officer finds that Mr. Inman is transit dependent and granted him a qualified exclusion to ride to the MAX Blue Line, from 12:30 p.m. until 1 p.m. and from 7 p.m. until 8 p.m. Even though Mr. Inman 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. Inman 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. Gary D. Inman on June 23, 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.

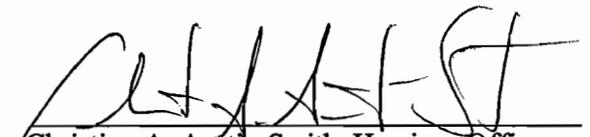
3. Scope of the Exclusion:

Mr. Inman shall be allowed to ride the MAX Blue Line, from 12:30 p.m. until 1 p.m. and from 7 p.m. until 8 p.m.

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	Mailing list	Hearings Office	Received
5	Hearing notice	Hearings Office	Received
6	Statement of Rights	Hearings Office	Received

