



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

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HEARINGS OFFICER'S ORDER

TriMet vs. Lorin L. Sabin

CASE NO. 3100232
(TriMet Exclusion Number 169052)

HEARING DATE: July 15, 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. Lorin L. Sabin on June 16, 2010. The case was forwarded to the City of Portland Hearings Office on June 17, 2010. The Hearings Office mailed a hearing notice to the parties on June 17, 2010, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Sabin's rights in the hearing process. A rescheduled hearing notice and Interim Order were mailed to the parties on June 23, 2010.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Sabin 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 by Interim Order dated June 23, 2010.

Mitigating and/or Aggravating Factors: The Hearings Officer finds the fact that the conduct resulted in physical harm to another as a mitigating 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. Sabin failed to appear at the hearing and did not submit a written request to the Hearings Officer to reschedule the hearing. Mr. Sabin did not contact the Hearings Office prior to the hearing via telephone, in person or fax. Mr. Sabin 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 based solely upon Exhibits 1 through and including 8, which the Hearings Officer find to be relevant and what a reasonable person would rely upon, therefore admitting them into the evidentiary record.

Officer Mike Danovich, Milwaukie Police Department, issued the exclusion. A copy of the exclusion and his written report are at Exhibit 3. This exhibit indicates that on June 16, 2010, at the SE 82nd Avenue Transit Station, Officer Danovich issued the exclusion to Mr. Sabin for violating TriMet Code 28.15A, Prohibited Activities on District Transit System, specifically for disruptive conduct inside a district vehicle.

Officer Danovich reported that he was called to the 82nd MAX platform to respond to a report of a fight on a train. Witnesses directed him to Mr. Sabin. Officer Danovich wrote: "Upon contacting Mr. Sabin he told me he was irritated on the train by a man. Mr. Sabin said he shouldn't have punched the other subject and has an anger problem. He still was agitated over the fight and seemed to be ready to fight again. Mr. Sabin had blood marks on his face and chest. I excluded Mr. Sabin for fighting on the train."

TriMet Code 28.15A(16), in pertinent part, states that "no person shall occupy, move about or engage in activity in a District Vehicle in a manner that: (b) Interferes with or disrupts the function or safe operation of the District Vehicle, including movement that constitutes a distraction to the operator of a District Vehicle."

The Hearings Officer finds that the preponderance of the evidence indicates that Mr. Sabin was involved in a physical fight while riding a TriMet vehicle and that he punched another passenger. The Hearings Officer finds that this fight was disruptive and endangered the safe operation of the MAX train. The Hearings Officer finds that the Notice of Exclusion was properly issued to Mr. Sabin on June 16, 2010, and is valid.

Special Exceptions: The Hearings Officer finds there is no evidence in the record to suggest that Mr. Sabin 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. Lorin Sabin on June 16, 2010.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on July 21, 2010, and shall conclude on August 20, 2010 at 5:00 p.m.

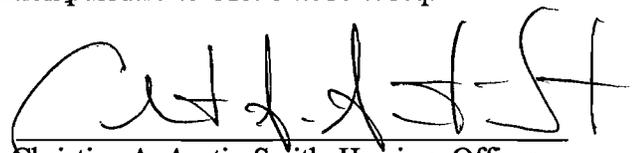
3. Scope of the Exclusion:

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 16, 2010, not more than five (5) business days following the hearing, and will become final on July 21, 2010.

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

Dated: July 16, 2010



Christina A. Austin-Smith, Hearings Officer

CAAS:gj/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	Request to reschedule	Danovich, Officer Mike	Received
8	Rescheduled hearing notice	Hearings Office	Received

