



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

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HEARINGS OFFICER'S ORDER

TriMet vs. Monnu R. Williams

CASE NO. 3100241
(TriMet Exclusion Number 186093)

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. Monnu R. Williams on June 23, 2010. The case was forwarded to the City of Portland Hearings Office on June 25, 2010. The Hearings Office mailed a hearing notice and Interim Order to the parties on June 29, 2010, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Williams' rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Williams 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 on June 29, 2010.

Mitigating and/or Aggravating Factors: The Hearings Officer finds the fact that Mr. Williams has two prior citations and three prior exclusions 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. Williams failed to appear at the hearing and did not submit a written request to the Hearings Officer to reschedule the hearing. Mr. Williams did not contact the Hearings Office prior to the hearing via telephone, in person or fax. Mr. Williams 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 6, which the Hearings Officer find to be relevant and what a reasonable person would rely upon, therefore admitting them into the evidentiary record.

Exhibit 3 is a copy of the notice of exclusion issued by Officer Paul Sharp, Transit Police Division. Officer Sharp indicates in this handwritten report that on June 23, 2010, at 8:10 a.m. he issued an exclusion to Mr. Williams for riding a MAX train without a valid fare. Officer Sharp indicates that Mr. Williams has 2 prior citations and 3 prior exclusions.

Officer Sharp issued Mr. Williams a Notice of Exclusion 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 evidence admitted into the record, that it is more probable than not that Mr. Williams did not have valid proof of payment while using a District Vehicle. The Hearings Officer finds that the Notice of Exclusion was properly issued to Mr. Williams on June 23, 2010, and is valid.

Special Exceptions: The Hearings Officer finds there is no evidence in the record to suggest that Mr. Williams 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. Monnu Williams on June 23, 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
<u>1</u>	Appeal Form page 2	Turner, Anna	Received
<u>2</u>	TriMet Fare Inspection System print out	Turner, Anna	Received
<u>3</u>	Notice of Exclusion	Turner, Anna	Received
<u>4</u>	Mailing list	Hearings Office	Received
<u>5</u>	Hearing notice	Hearings Office	Received
<u>6</u>	Statement of Rights	Hearings Office	Received

