



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

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HEARINGS OFFICER'S ORDER

TriMet vs. Tanjanika C.A. Cook

CASE NO. 3100243
(TriMet Exclusion Number 163832)

HEARING DATE: July 15, 2010

APPEARANCES:

Ms. Tanjanika C.A. Cook, Excluded Party

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 Ms. Tanjanika C.A. Cook on June 23, 2010. The case was forwarded to the City of Portland Hearings Office on June 29, 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 Ms. Cook's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Ms. Cook when she was excluded. The notice referenced the violating conduct/applicable code provision.

Stays: The exclusion was subject to an automatic stay upon being issued and extended at the Hearings Officer's direction by Interim Order on June 29, 2010.

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. Ms. Cook appeared at the hearing and testified on her own behalf. No one appeared and testified on behalf of TriMet. The Hearings Officer makes this decision based upon the testimony of Ms. Cook and also considered 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.

Officer Haynes, Transit Police Division, issued the Notice of Exclusion to Ms. Cook on June 23, 2010, a copy of which is at Exhibit 3, along with Officer Haynes' typewritten report of the incident. Officer Haynes wrote: "On

the above listed date and time I contacted the above listed subject while conducting fare inspections at the eastbound Max platform located at 188th/Burnside. I contacted the listed subject while they were on the Train. The subject told me they were riding without fare and had no money to purchase fare.”

Ms. Cook testified and accepted responsibility for her actions. She stated that she had money in her pocket, but also had her son with her, so she just jumped onto the first MAX train that came and got caught without fare. She testified that she has never not paid before.

Officer Haynes issued Ms. Cook a Notice of Exclusion on June 23, 2010, for violating TriMet Code 29.15A, riding a District Vehicle without paying the applicable fare. TriMet Code 29.15A states “it shall be unlawful for any person to occupy, ride in or use, any District Vehicle without paying the applicable fare.”

The Hearings Officer finds, based on the admissions of Ms. Cook and the evidence admitted into the record, that it is more probable than not that Ms. Cook did not pay her fare to ride the MAX train on June 23, 2010, and was riding on a District Vehicle, specifically the MAX Blue Line, without having paid the applicable fare. The Hearings Officer finds that the Notice of Exclusion was properly issued to Ms. Cook on June 23, 2010, and is valid.

Special Exceptions: The Hearings Officer finds that Ms. Cook relies on public transportation to get to work and care for her son. Therefore, the Hearings Officer finds that Ms. Cook is transit dependent and granted her a qualified exclusion to ride Bus Lines #12, #71, #72, and #155, all hours of the day, all days of the week. Even though Ms. Cook has been granted a qualified exclusion, she must still follow all TriMet laws/rules while on TriMet property/vehicles. Violation of TriMet laws/rules, while on TriMet property/vehicles, may subject Ms. Cook 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 Ms. Tanjanika C.A. Cook, 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:

Ms. Cook shall be allowed to ride Bus Lines #12, #71, #72, and #155, all hours of the day, all days of the week.

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

