



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

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HEARINGS OFFICER'S ORDER

TriMet vs. Matthew L. Cooper

CASE NO. 3100260
(TriMet Exclusion Number 186182)

HEARING DATE: July 29, 2010

APPEARANCES:

Excluded Party did not appear

Supervisor Bruce Deters, for TriMet

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. Matthew L. Cooper on July 9, 2010. The case was forwarded to the City of Portland Hearings Office on July 13, 2010. The Hearings Office mailed a hearing notice and Interim Order to the parties on July 13, 2010, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Cooper's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Cooper 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 July 13, 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. Mr. Cooper failed to appear at the hearing and did not submit a written request to the Hearings Officer to reschedule the hearing. Mr. Cooper did contact the Hearings Office prior to the hearing via telephone, leaving a message to state he could not attend the hearing. Mr. Cooper did not present any evidence to contest the exclusion or the credibility/relevance of any evidence. Supervisor Bruce Deters appeared and testified on behalf

of TriMet. The Hearings Officer makes this decision based upon the testimony of Supervisor Deters 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.

Supervisor Deters testified that on July 9, 2010, at 1920, he was in his vehicle on SW 2nd Avenue and stopped at the signal, in the right turn lane near West Burnside. When he looked to the left, he observed Mr. Cooper in Bus Shelter #9526, saw him take a puff of a cigarette and exhale the smoke into the bus shelter. Supervisor Deters testified that he pulled over and approached Mr. Cooper to talk to him. He stated that Mr. Cooper was standing in front of a sign with the TriMet schedule that clearly indicated no smoking. He stated that Mr. Cooper extinguished the cigarette after he asked.

Supervisor Deters issued Mr. Cooper a Notice of Exclusion on July 9, 2010, for violating TriMet Code 28.15A, Prohibited Activities on District Transit System, specifically smoking. TriMet Code Section 28.15A(2), in pertinent part, prohibits a person from smoking tobacco or any other substance within any space or area where posted signage prohibits smoking.

The Hearings Officer finds, based on testimony of Supervisor Deters, and his written report at Exhibit 3, that it is more probable than not that Mr. Cooper was smoking a cigarette in a TriMet bus shelter, in an area where posted signage prohibited smoking. Therefore, the Hearings Officer finds that the Notice of Exclusion was properly issued to Mr. Cooper on July 9, 2010, and is valid.

Special Exceptions: The Hearings Officer finds there is no evidence in the record to suggest that Mr. Cooper 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. Matthew Cooper on July 9, 2010.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on August 4, 2010, and shall conclude on September 3, 2010 at 5:00 p.m.

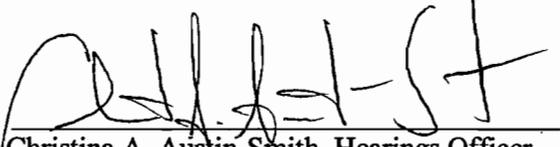
3. Scope of the Exclusion:

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 30, 2010, not more than five (5) business days following the hearing, and will become final on August 4, 2010.

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

Dated: July 30, 2010


Christina A. Austin-Smith, Hearings Officer

CAAS:rs

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal form page 2	Turner, Anna	Received
2	TriMet Fare Inspection System printout	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

