



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

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**HEARINGS OFFICER'S ORDER**

TriMet vs. Darren Raymond Jones

CASE NO. 3100268  
(TriMet Exclusion Number 186853)

HEARING DATE: July 27, 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. Darren Raymond Jones on July 12, 2010. The case was forwarded to the City of Portland Hearings Office on July 16, 2010. The Hearings Office mailed a hearing notice to the parties on July 19, 2010, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Jones' rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Jones 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 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. Jones failed to appear at the hearing. After initially holding the hearing on the public record and admitting documents labeled as Exhibits 1 through 6, the Hearings Officer later re-opened the record to admit two other documents (Exhibits 7 and 8) submitted via fax and mail by Mr. Jones. Mr. Jones faxed a handwritten note to the Hearings Office on July 26, 2010, at 4:06 p.m., explaining that he could not attend the meeting and requesting a variance (Exhibit 7). He also mailed a letter that was received by the Hearings Office on July 27, 2010, after his hearing had concluded, requesting the hearing be rescheduled (Exhibit 8). No one appeared and testified on behalf of TriMet. The Hearings Officer makes this decision solely based upon Exhibits 1 through and

including 8, which the Hearings Officer finds to be relevant and what a reasonable person would rely upon, therefore admitting them into the evidentiary record.

Supervisor Laura Berlin issued the notice of exclusion to Mr. Jones on July 12, 2010 at the Clackamas Transit Center and submitted a handwritten report of the incident (Exhibit 3). She writes: "Darren Raymond Jones was walking thru the asphalt parking lot near the Max station at Clackamas TC and jumped over the 4 ft fence onto the station area to purchase a fare on 7-12-10 at 17:35 pm. This fence had just been repaired as it had been broken down from other people jumping over the barrier. Mr. Jones thought that there should be a gate so he wouldn't have to walk around to the entrance. He also said he saw no signs saying he could jump over the fence."

Supervisor Berlin issued Mr. Jones a Notice of Exclusion on July 12, 2010, for violating TriMet Code 28.15B, Prohibited Misuse of District Transit System. Specifically, the exclusion was for violating subsection (10), Damaging or Defacing District Property, which states, in pertinent part: "No person shall in any manner damage, destroy, interfere with, or obstruct in any manner, the property, services or facilities of the District."

The Hearings Officer finds there is credible evidence to indicate Mr. Jones did jump over a fence that was intended to serve as a barrier. However, the Hearings Officer does not find any evidence in the record that his actions destroyed, interfered with or obstructed, in any manner, the property or facilities of the District. While Supervisor Berlin does note the fence had been recently repaired due to damage from others jumping over the fence, there is no direct evidence of Mr. Jones causing damage. While an exclusion for this behavior may well be appropriate, the Hearings Officer finds the facts in this case do not support an exclusion for the specific violation marked by Supervisor Berlin.

Therefore, the Hearings Officer finds that the Notice of Exclusion issued to Mr. Jones on July 12, 2010 is not valid.

#### ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer sets aside the Notice of Exclusion issued to Mr. Darren Raymond Jones on July 12, 2010.

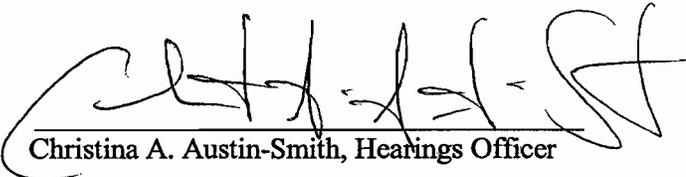
2. Length of the Exclusion:

The exclusion shall not become effective.

3. This order has been mailed to the parties on July 29, 2010, not more than five (5) business days following the hearing, and will become final on August 3, 2010.

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

Dated: July 29, 2010



Christina A. Austin-Smith, Hearings Officer

CAAS:rs

Enclosure

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
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
7	Variance request	Jones, Darren Raymond	Received
8	Request to reschedule	Jones, Darren Raymond	Received

