



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

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HEARINGS OFFICER'S ORDER

TriMet vs. Joseph Robert Allan

CASE NO. 3100270
(TriMet Exclusion Number 148534)

HEARING DATE: July 29, 2010

APPEARANCES:

Mr. Joseph Robert Allan, Excluded Party

Supervisor Dennis Collier, 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. Joseph Robert Allan on July 10, 2010. The case was forwarded to the City of Portland Hearings Office on July 20, 2010. The Hearings Office mailed a hearing notice to the parties on July 20, 2010, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Allan's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Allan 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. Allan appeared at the hearing and testified on his own behalf. Supervisor Dennis Collier appeared and testified on behalf of TriMet. The Hearings Officer makes this decision based upon the testimony of Mr. Allan, Supervisor Collier and the exhibits admitted, without objection, into the evidentiary record (Exhibits 1 through and including 6).

Supervisor Collier issued the exclusion to Mr. Allan on July 10, 2010. He testified that on that day he observed Mr. Allan crossing the tracks at the Gateway Transit Center in violation of several posted signs that prohibit people from entering the trackway. He stated that Mr. Allan was very courteous and cooperative throughout the encounter.

Mr. Allan admitted that he crossed the tracks and accepted responsibility for his conduct. He requested the Hearings Officer consider modifying the exclusion as it was his first time violating a TriMet code and the 90-day period would seriously limit his ability to work and attend treatment programs.

Mr. Allan received a Notice of Exclusion for violating TriMet Code 28.15D(4), Prohibited Risks to Transit System Security and Order. TriMet Code 28.15D(4) lists as a prohibited risk "interference with or trespass on light rail or commuter rail right-of-way." It prohibits someone from entering or remaining upon the right-of-way of the light rail or commuter rail transit line, so as to create a hazard to that person or interfere with the passage of a District Vehicle. While the Code does not delineate the boundaries of the "right-of-way," the Hearings Officer finds that walking across the track would be included in the train's right-of-way. The Hearings Officer finds, based on the testimony of Supervisor Collier and admissions of Mr. Allan, that Mr. Allan did cross the track and was therefore in the train's right-of-way.

Accordingly, the Hearings Officer finds it is more probable than not that Mr. Allan did trespass on the rail right-of-way, creating a hazard to himself and the safe passage of a District Vehicle. The Hearings Officer finds that the Notice of Exclusion was properly issued to Mr. Allan on July 10, 2010, and is valid.

Special Exceptions: The Hearings Officer finds that Mr. Allan relies on public transportation and needs access to TriMet seven days a week to get to work and treatment programs. Therefore, the Hearings Officer finds that Mr. Allan is transit dependent and modified the exclusion period to zero days.

ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer modifies the Notice of Exclusion issued to Mr. Joseph Robert Allan on July 10, 2010.

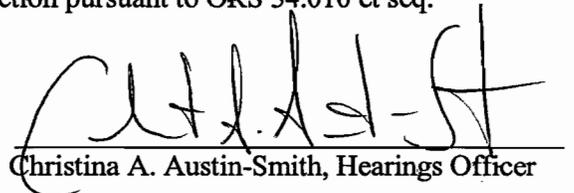
2. Length of the Exclusion:

The exclusion shall not become effective.

3. 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 effective immediately.

4. 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	<u>Received</u>
2	TriMet Fare Inspection System printout	Turner, Anna	<u>Received</u>
3	Notice of Exclusion	Turner, Anna	<u>Received</u>
4	Mailing List	Hearings Office	<u>Received</u>
5	Hearing Notice	Hearings Office	<u>Received</u>
6	Statement of Rights	Hearings Office	<u>Received</u>

