



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

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HEARINGS OFFICER'S ORDER

TriMet vs. Chris E. Finley

CASE NO. 3100281
(TriMet Exclusion Number 146598)

HEARING DATE: August 3, 2010

APPEARANCES:

Excluded Party did not appear

Officer Chris Watkins, for TriMet

HEARINGS OFFICER: Mr. Gregory J. Frank

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. Chris E. Finley on July 20, 2010. The case was forwarded to the City of Portland Hearings Office on July 22, 2010. The Hearings Office mailed a hearing notice to the parties on July 23, 2010, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Finley's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Finley when he was excluded. The notice did reference 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: Mr. Finley was mailed a Notice of Hearing on July 23, 2010 to two separate addresses provided to the Hearings Office. The Notices were not returned by the U.S. Mail Service and Mr. Finley did not contact the Hearings Office prior to the hearing requesting that the hearing be rescheduled. Mr. Finley did not appear at the hearing. Police Officer Watkins appeared and testified on behalf of TriMet. The Hearings Officer makes this decision based upon the testimony of Officer Watkins and the exhibits admitted into the evidentiary record (Exhibits 1 through and including 6).

Mr. Finley received a TriMet Notice of Exclusion on July 20, 2010 for allegedly violating ORS 475.864 (Unlawful Possession of Marijuana) and for violating TMC 29.15 A (fare violation). A person violates ORS 475.864 if the person is in possession of marijuana. A person violates TMC 29.15 (fare violation) if the person rides a TriMet vehicle without having, in his/her possession, proof of purchase of a valid fare. Also, a person violates TMC 29.15 (fare violation) if the person, upon request of a TriMet representative, fails to display for the representative's view, proof of purchase of a valid fare.

Officer Watkins stated that on July 20, 2010 he was conducting routine fare inspections on an eastbound Blue Line Max train when he contacted Mr. Finley. Officer Watkins stated that he noted that Mr. Finley emitted a strong odor of marijuana and asked Mr. Finley if he was in possession of marijuana. Officer Watkins stated that Mr. Finley produced a small amount of marijuana. Officer Watkins also stated that Mr. Finley was unable to produce, for inspection, proof that Mr. Finley had purchased a valid fare.

The Hearings Officer finds the testimony of Officer Watkins is credible and accurately reflect the events leading to the issuance of the Notice of Exclusion to Mr. Finley on July 2010. The Hearings Officer finds that it is more probable than not that on July 20, 2010 Mr. Finley did not display for viewing by Officer Watkins, while riding a Max train outside of the fareless area, proof of purchase of a valid fare. The Hearings Officer finds it is more probable than not that Mr. Finley, on July 20, 2010, did violate TMC 29.15 (fare violation). The Hearings Officer also finds that it is more probable than not that on July 20, 2010, while riding a TriMet Max Train Mr. Finley was in possession of a small amount of marijuana. The Hearings Officer finds it is more probable than not that on July 20, 2010 Mr. Finley did violate ORS 475.864. The Hearings Officer finds the Notice of Exclusion issued to Mr. Chris E. Finley on July 20, 2010 is valid.

The Hearings Officer notes that a person found to violate TMC 29.15 A. (fare violation) is subject to a 30 day exclusion term and a person found in violation of ORS 475.864 (marijuana) is subject to a 60 day exclusion. The Hearings Officer finds that the term of this exclusion shall be calculated under the ORS 475.864 (marijuana) violation; 60 days.

Special Exceptions: The Hearings Officer finds there is no evidence in the record to suggest that Mr. Finley 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. Chris E. Finley on July 20, 2010.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on August 10, 2010, and shall conclude on October 7, 2010 at 5:00 p.m.

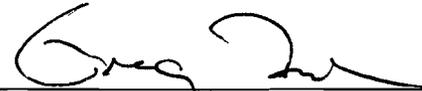
3. Scope of the Exclusion:

The scope of the exclusion shall be as described in the Notice of Exclusion.

4. This order has been mailed to the parties on August 4, 2010, not more than five (5) business days following the hearing, and will become final on August 10, 2010.

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

Dated: August 4, 2010



 Gregory J. Frank, Hearings Officer

GJF:rs/cb

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

