



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

1900 SW 4th Avenue, Room 3100

Portland, OR 97201

phone: (503) 823-7307 - fax: (503) 823-4347

web: www.portlandoregon.gov/auditor/hearings



HEARINGS OFFICER'S ORDER

TriMet vs. Jeremiah Howard

CASE NO. 3100383

(TriMet Exclusion Number 167725)

HEARING DATE: October 14, 2010

APPEARANCES:

Mr. Jeremiah Howard, Excluded Party

Sgt. Lynn Gordon Schoenfeld, on behalf of TriMet

HEARINGS OFFICER: Ms. Kimberly M. Graves

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. Jeremiah Howard on September 25, 2010. The case was forwarded to the City of Portland Hearings Office on September 30, 2010. The Hearings Office mailed a hearing notice to the parties on October 5, 2010, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Howard's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Howard 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. Sergeant Schoenfeld, Clackamas County Sheriff's Office, appeared and testified on behalf of TriMet. Sgt. Schoenfeld testified that he first noticed Mr. Howard as Mr. Howard was roughhousing or fighting with two other male subjects near the bus stop kiosks at SE 82nd Avenue and SE Division Street on September 25, 2010. Sgt. Schoenfeld indicated that he made contact with the three subjects, but had difficulty identifying the subjects and maintaining order as the subjects were non-compliant with his orders. Sgt. Schoenfeld indicated that two

officers from the Portland Police Bureau (PPB) were in the area and arrived to assist him with the subjects. While Sgt. Schoenfeld focused the majority of his attention on a different subject, he did observe Mr. Howard engaging in a physical confrontation with a PPB officer, as well as hear Mr. Howard making statements to incite violence against the police by other people in the area. Sgt. Schoenfeld stated that in his opinion, one of the other subjects was the true instigator of the incident, and that Mr. Howard's conduct was the result of egging on by the other subject.

Mr. Jeremiah Howard was cited with violating TMC 28.15D-Threats and given a 90-day exclusion. Mr. Howard appeared at the hearing and stated that "most" of what the Sergeant said about the incident was correct. Mr. Howard denied attempting to strike any police officer, but did admit to making some comments regarding the officer's treatment of him. Mr. Howard indicated that he was with two other individuals, but that he was the only one taken into custody. Additionally, as a result of his conduct, Mr. Howard agreed that he was given a criminal citation from the Portland Police Bureau.

Exhibits 1 through, and including, 6 were received into the record without objection. The Hearings Officer considers the officer to be credible and the facts contained in both the report and his oral statement to be true. The Hearings Officer takes note specifically of the Sergeant's testimony that Mr. Howard was making statements intended to incite violence against the officers on scene. The Hearings Officer finds that Mr. Howard is downplaying his involvement in the incident, and that his statements are contradictory to the fact that he was the only subject taken into custody and that he received a criminal citation. The Hearings Officer finds that it is more probable than not that the conduct forming the basis to issue the Notice of Exclusion occurred.

Special Exceptions: The Hearings Officer finds that Mr. Howard is transit dependent. The Hearings Officer further finds that Mr. Howard needs access Monday through Friday to TriMet bus lines 72, 4, and 20 between the hours of 7:00 a.m. and 3:30 p.m. for the purpose of traveling to and from school. Mr. Howard is permitted to ride the above mentioned lines between the SE Division and SE 98th bus stop and David Douglas High School. Additionally, on Tuesdays, Mr. Howard needs access to TriMet bus line 8 to travel between 4:30 p.m. and 5:30 p.m. to get home from his after school lesson.

ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer modifies the Notice of Exclusion issued to Mr. Jeremiah Howard on September 25, 2010.

2. Length of the Exclusion:

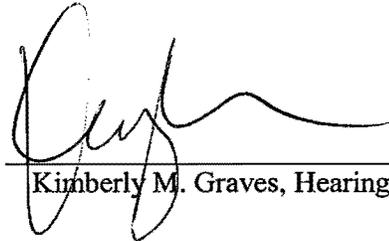
The exclusion shall become effective with this Order, on October 20, 2010, and shall conclude on January 5, 2010 at 5:00 p.m.

3. Scope of the Exclusion:

Mr. Howard shall be permitted to ride according to the following guidelines during the term of his exclusion: Monday through Friday on TriMet bus lines 72, 4, and 20 between the hours of 7:00 a.m. and 3:30 p.m. for the purpose of traveling to and from school. Mr. Howard is permitted to ride the above mentioned lines between the SE Division and SE 98th bus stop and David Douglas High School. Additionally, on Tuesdays, Mr. Howard needs access to TriMet bus line 8 to travel between 4:30 p.m. and 5:30 p.m. to get home from his after school lesson.

4. This order has been mailed to the parties on October 15, 2010, not more than five (5) business days following the hearing, and will become final on October 20, 2010.
5. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: October 15, 2010



Kimberly M. Graves, Hearings Officer

KMG: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