



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

TriMet vs. Sierra L. McDonald

CASE NO. 3110012
(TriMet Exclusion Number 99753)

HEARING DATE: January 27, 2011

APPEARANCES:

Officer Steve Staul, on behalf of TriMet

Excluded party did not appear

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 Ms. Sierra L. McDonald on January 13, 2011. The case was forwarded to the City of Portland Hearings Office on January 18, 2011. The Hearings Office mailed a hearing notice to the parties on January 18, 2011, within the time prescribed in the TriMet Code. The notice contained the required information concerning Ms. McDonald's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Ms. McDonald when she 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. Officer Staul appeared at the hearing and testified that he responded on January 13, 2011 to a report of a disturbance between Ms. McDonald and a bus driver, Ms. Rogers. Officer Staul indicated that he is aware that the parties have an ongoing conflict, but does not believe previous incidents have required police or TriMet response. Officer Staul indicated that Ms. McDonald, on this day, refused to exit the bus after he made numerous requests. Officer Staul also indicated that Ms. McDonald has a volatile personality and reacts in an unpredictable manner when confronted. Officer Staul believes that the volatile nature of Ms. McDonald's personality makes

her a risk to the TriMet system and other passengers using the same transit lines that she uses. Officer Staul indicated that he had not intended to issue an exclusion to Ms. McDonald on this day; however, her conduct was such that he was left without any other option. Officer Staul indicated that he issued the Notice of Exclusion based on Ms. McDonald's conduct which interfered with the movement of the TriMet bus.

Ms. McDonald received a Notice of Exclusion on January 13, 2011 for allegedly violating ORS 166.116 (Interfering with Public Transportation). TMC 28.15C states that:

“No person shall engage in activity prohibited by the criminal laws of any state, county or municipality, in which the criminal incident occurs, while on a District Vehicle or in or upon a District Station or District Parking Facility.”

A person violates ORS 166.116 if the person intentionally or knowingly interferes with the provision or use of public transportation services by, among other things, interfering with the movement of, or access to, public transit vehicles.

Ms. McDonald was mailed a Notice of Hearing on January 18, 2011. The Notice was not returned by the U.S. Postal Service and Ms. McDonald did not contact the Hearings Office prior to the hearing requesting that the hearing be rescheduled. Ms. McDonald failed to appear at the hearing and did not submit a written request to the Hearings Office to reschedule the hearing. She presented no evidence to contest the credibility or relevance of the officer's written report. Exhibits 1 through, and including, 6 were received into the record without objection.

The Hearings Officer finds the testimony of Officer Staul to be credible and accurately reflect the events leading up to the issuance of the Notice of Exclusion issued to Ms. McDonald on January 13, 2011. The Hearings Officer finds it is more probable than not that on January 13, 2011, Ms. McDonald engaged in conduct which interfered with the movement of a public transit vehicle. The Hearings Officer finds that it is more probable than not that on January 13, 2011, Ms. McDonald did violate ORS 166.116. The Hearings Officer finds the Notice of Exclusion issued to Ms. McDonald on January 13, 2011 is valid.

Special Exceptions: The Hearings Officer finds there is no evidence in the record to suggest that Ms. McDonald 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 Ms. Sierra L. McDonald on January 13, 2011.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on February 2, 2011, and shall conclude on April 1, 2011 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 January 28, 2011, not more than five (5) business days following the hearing, and will become final on February 2, 2011.

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

Dated: January 28, 2011

Kimberly M. Graves

Kimberly M. Graves, Hearings Officer
By: Greg [Signature]

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