



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

TriMet vs. James Allen Kasanos

CASE NO. 3110132

(TriMet Exclusion Number 102458)

HEARING DATE: April 28, 2011

APPEARANCES:

James Kasanos, Excluded Party

Officer Keith Welch, 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. James Allen Kasanos on March 28, 2011. The case was forwarded to the City of Portland Hearings Office on March 31, 2011. The Hearings Office mailed a hearing notice and Interim Order extending the stay of exclusion to the parties on April 1, 2011, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Kasanos' rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Kasanos when he was excluded. The notice referenced the violating conduct/applicable code provision.

Stays: The exclusion was stayed on the Hearings Officer's direction on April 1, 2011.

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 Welch appeared and testified on behalf of TriMet. Officer Welch testified that he was called on March 28, 2011 to the Beaverton Transit Center to deal with an "uncooperative subject." Officer Welch testified that he did not witness the conduct which led to the exclusion, but was told by a TriMet employee that a male

subject had crossed the MAX tracks after being instructed not to do so. Officer Welch contacted the subject and identified him as James Kasanos. Officer Welch testified that Mr. Kasanos admitted to crossing the tracks and seeing the signs indicating that crossing the tracks is prohibited.

Mr. Kasanos received a Notice of Exclusion on March 28, 2011 for allegedly violating TMC 28.15C by engaging in conduct constituting the crime of Criminal Trespass in the 1st Degree under ORS 164.255. 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 164.255 if a person (c) Enters or remains unlawfully upon railroad yards, tracks, bridges or rights of way.

Mr. Kasanos appeared at the hearing and testified that he did “jump the tracks.” Mr. Kasanos denied that the TriMet employee told him not to cross the tracks prior to him doing so. Mr. Kasanos testified that the area had posted signage indicating that he was not to cross the tracks, but stated that the signage did not say that crossing the tracks was “unlawful.” Exhibits 1 through, and including, 6 were admitted into the record without objection.

The Hearings Officer finds the testimony of both parties to be credible and accurately reflect the events leading up to the issuance of the Notice of Exclusion issued to Mr. Kasanos on March 28, 2011. The Hearings Officer finds it is more probable than not that on March 28, 2011 Mr. Kasanos violated TMC 28.15C by engaging in conduct constituting the crime of Criminal Trespass in the 1st Degree under ORS 164.255 while on TriMet property. The Hearings Officer finds the Notice of Exclusion issued to Mr. Kasanos on March 28, 2011 is valid.

Special Exceptions: The Hearings Officer finds there is sufficient evidence in the record to suggest that Mr. Kasanos is transit dependent and needs access to TriMet during the term of his exclusion to continue his schooling and employment. Mr. Kasanos shall be permitted Monday through Friday between 6:30 a.m. and 10:00 p.m. and Saturday or Sunday between 10:00 a.m. and 10:00 p.m. to ride bus #57 between SW Tualatin Valley Hwy/178th and the Beaverton Transit Center, the Red or Blue line MAX train between the Beaverton Transit Center and downtown Portland, all lines within the Rail Free Zone, and bus #4 between downtown Portland and SE 7th/Harrison.

ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer modifies the Notice of Exclusion issued to Mr. James Allen Kasanos on March 28, 2011.

2. Length of the Exclusion:

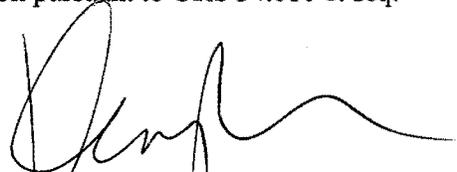
The exclusion shall become effective with this Order, on May 4, 2011, and shall conclude on July 1, 2011 at 5:00 p.m.

3. Scope of the Exclusion:

Mr. Kasanos shall be permitted Monday through Friday between 6:30 a.m. and 10:00 p.m. and Saturday or Sunday between 10:00 a.m. and 10:00 p.m. to ride bus #57 between SW Tualatin Valley Hwy/178th and the Beaverton Transit Center, the Red or Blue line MAX train between the Beaverton Transit Center and downtown Portland, all lines within the Rail Free Zone, and bus #4 between downtown Portland and SE 7th/Harrison.

- 4. This order has been mailed to the parties on April 29, 2011, not more than five (5) business days following the hearing, and will become final on May 4, 2011.
- 5. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: April 29, 2011



Kimberly M. Graves, Hearings Officer

KMG: jeg

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