

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

TriMet vs. Kamaria Grace Bates

CASE NO. 3110524

(TriMet Exclusion Number 177543)

HEARING DATE: November 29, 2011

APPEARANCES:

Ms. Kamaria Bates, Excluded Party

Officer Danny Hill, 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 Ms. Kamaria Grace Bates on November 2, 2011. The case was forwarded to the City of Portland Hearings Office on November 16, 2011. The Hearings Office mailed a Notice of Hearing to the parties on November 16, 2011, within the time prescribed in the TriMet Code. The notice contained the required information concerning Ms. Bates's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Ms. Bates 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 Hill appeared and testified on behalf of TriMet. Officer Hill testified that on November 2, 2011, he was conducting a fare mission at the Clackamas Town Center MAX platform with other officers when he contacted Ms. Bates as she exited a MAX train. Officer Hill testified that he contacted Ms. Bates and asked for proof of fare payment. Officer Hill testified that Ms. Bates told him that she had not purchased a fare and that she had just ridden one stop. Officer Hill testified that Ms. Bates told him that she didn't think that she needed to

purchase a fare for just traveling one stop. Officer Hill testified that Ms. Bates told him that she had ridden TriMet before and that she knew that fare was required to ride. Officer Hill testified that Ms. Bates was uncooperative during the contact and he ultimately arrested her for Theft of Services under ORS 164.125.

Ms. Bates received a Notice of Exclusion on November 2, 2011 for allegedly violating TMC 28.15C by engaging in conduct constituting the crime of Theft of Services under ORS 164.125. A person violates ORS 164.125 if the person, with the intent to avoid payment, obtains services that are otherwise available only for compensation.

Ms. Bates appeared at the hearing and stated that she had run to catch the MAX train at the Fuller stop, and that she did not purchase a fare prior to boarding. Ms. Bates testified that she intended to ride a bus from the Clackamas Town Center Transit Center and that she had money to purchase a fare. Ms. Bates testified that she had been told in the past that it was okay to not purchase a fare if a person was only riding one stop. Exhibits 1 through, and including, 6 were received into the record without objection.

The Hearings Officer finds the testimony of Officer Hill to be credible and to accurately reflect the events leading up to the issuance of the Notice of Exclusion to Ms. Bates on November 2, 2011. The Hearings Officer finds it is more probable than not that on November 2, 2011, Ms. Bates violated TMC 28.15C by engaging in conduct constituting the crime of Theft of Services under ORS 164.125 while on TriMet property. The Hearings Officer finds the Notice of Exclusion issued to Ms. Bates on November 2, 2011, is valid.

Special Exceptions: The Hearings Officer finds there is sufficient evidence in the record to suggest that Ms. Bates is transit dependent and needs access during the term of her exclusion to look for employment. Ms. Bates shall be permitted Monday through Wednesday between 12:00 Noon and 6:00 p.m. to ride all TriMet bus lines. Ms. Bates is not permitted to ride TriMet trains during the term of her exclusion.

ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer modifies the Notice of Exclusion issued to Ms. Kamaria Grace Bates on November 2, 2011.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on December 6, 2011, and shall conclude on February 4, 2012, at 5:00 p.m.

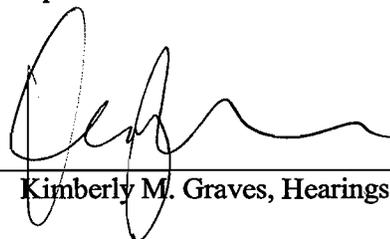
3. Scope of the Exclusion:

Ms. Bates shall be permitted Monday through Wednesday between 12:00 Noon and 6:00 p.m. to ride all TriMet bus lines. Ms. Bates is not permitted to ride TriMet trains during the term of her exclusion.

4. This order has been mailed to the parties on December 1, 2011, not more than five (5) business days following the hearing, and will become final on December 6, 2011.

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

Dated: December 1, 2011



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