



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

TriMet vs. Vanessa Trigg

CASE NO. 3110547

(TriMet Exclusion Number 174835)

HEARING DATE: December 29, 2011

APPEARANCES:

Ms. Vanessa Trigg, Excluded party

No one appeared 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. Trigg on December 4, 2011. The case was forwarded to the City of Portland Hearings Office on December 8, 2011. The Hearings Office mailed a Notice of Hearing and Interim Order extending the stay on the exclusion to the parties on December 8, 2011, within the time prescribed in the TriMet Code. The notice contained the required information concerning Ms. Trigg's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Ms. Trigg when she was excluded. The notice referenced the violating conduct/applicable code provision.

Stays: The exclusion was stayed on the Hearings Officer's direction on December 8, 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. A written report is in the record which is represented to have been prepared by the sergeant issuing the Notice of Exclusion. The sergeant's written report stated, in summary, that on December 4, 2011, the sergeant contacted Ms. Trigg at the Parkrose Transit Center. The sergeant writes that the platform requires proof of fare purchase. The sergeant writes that Ms. Trigg handed him an unvalidated transit fare and told him that she received the fare from her probation officer.

Ms. Trigg received a Notice of Exclusion on December 4, 2011, for allegedly violating TMC 29.15 (fare violation). A person violates TMC 29.15 (fare violation) if the person rides a TriMet vehicle without having, in 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.

Ms. Trigg appeared at the hearing and stated that she received an unvalidated ticket from her probation officer which she intended to use to ride the MAX train. Ms. Trigg stated that she was waiting for the train off of the platform, and became impatient. Ms. Trigg stated that she walked onto the platform to see when the next train was arriving, and was contacted by the sergeant. Ms. Trigg stated that there was not a train at the station when she entered onto the platform. Ms. Trigg stated that there are validation machines on the platform for validating fares prior to boarding. Exhibits 1 through, and including, 6 were received into the record without objection.

The Hearings Officer notes that the burden lies with TriMet to prove that it is more likely than not that a violation of the TriMet code occurred. The Hearings Officer finds no evidence in the record to contradict Ms. Trigg's statement that she could have validated the ticket while on the platform prior to boarding a MAX train. The Hearings Officer finds that if validation machines are present on the platform, then the holder of an unvalidated fare is not in violation of the TriMet code until boarding or attempting to board a MAX train. The Hearings Officer finds that the sergeant's written report lacks sufficient detail to prove that a violation of the TriMet code occurred. The Hearings Officer finds that TriMet has failed to meet its burden with regard to the Notice of Exclusion issued to Ms. Trigg on December 4, 2011, because the report fails to indicate whether Ms. Trigg would have been able to validate her fare on the platform or not.

ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer sets aside the Notice of Exclusion issued to Ms. Trigg on December 4, 2011.

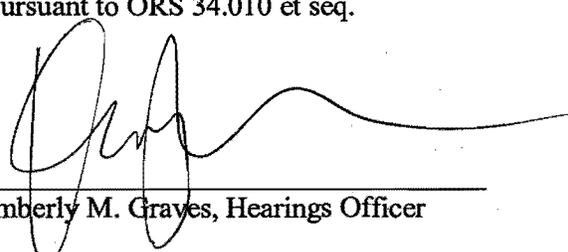
2. Length of the Exclusion:

The exclusion shall not become effective.

3. This order has been mailed to the parties on December 30, 2011, not more than five (5) business days following the hearing, and will become final on January 5, 2012.

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

Dated: December 30, 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	Notice of Hearing	Hearings Office	Received
6	Statement of Rights	Hearings Office	Received