



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

TriMet vs. Javier Sandoval

CASE NO. 3110557

(TriMet Exclusion Number 178632)

HEARING DATE: January 3, 2012

APPEARANCES:

None

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. Sandoval on December 21, 2011. The case was forwarded to the City of Portland Hearings Office on December 22, 2011. The Hearings Office mailed a Notice of Hearing to the parties on December 23, 2011, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Sandoval's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Sandoval 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. 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 21, 2011, the sergeant was checking passengers for proof of fare at the Clackamas Transit Station. The sergeant writes that he contacted Mr. Sandoval, and was told by Mr. Sandoval that he couldn't locate his fare. The sergeant writes that Mr. Sandoval could not tell him when or where he purchased his fare, and ultimately admitted to lying to the sergeant.

Mr. Sandoval received a Notice of Exclusion on December 21, 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.

Mr. Sandoval was mailed a Notice of Hearing on December 23, 2011. The Notice was not returned by the U.S. Mail Service and Mr. Sandoval did not contact the Hearings Office prior to the hearing requesting that the hearing be rescheduled. Mr. Sandoval did not appear at the hearing. The Hearings Officer makes this decision based upon the exhibits admitted into the evidentiary record (Exhibits 1 through and including 6).

The Hearings Officer finds the written statement of the sergeant to be credible and accurately reflects the events leading up to the issuance of the Notice of Exclusion issued to Mr. Sandoval on December 21, 2011. The Hearings Officer finds it is more probable than not that on December 21, 2011, Mr. Sandoval 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 Mr. Sandoval on December 21, 2011 is valid.

Special Exceptions: The Hearings Officer finds there is no evidence in the record to suggest that Mr. Sandoval 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 Mr. Sandoval on December 21, 2011.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on January 9, 2012, and shall conclude on March 9, 2012, at 5:00 p.m.

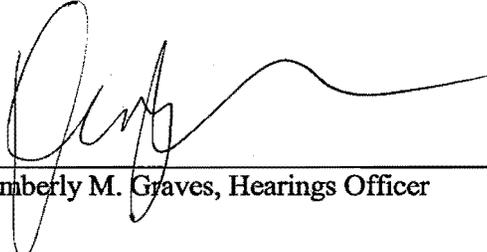
3. Scope of the Exclusion:

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 4, 2012, not more than five (5) business days following the hearing, and will become final on January 9, 2012.

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

Dated: January 4, 2012



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