



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

TriMet vs. Jermaine K. Lewis-Taylor

CASE NO. 3120010

(TriMet Exclusion Number 175157)

HEARING DATE: February 9, 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. Jermaine K. Lewis-Taylor on December 31, 2011. The case was forwarded to the City of Portland Hearings Office on January 6, 2012. The Hearings Office mailed a Notice of Hearing and Interim Order extending the stay on the exclusion to the parties on January 9, 2012, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Lewis-Taylor's rights in the hearing process. The hearing was rescheduled and a new hearing notice and a Second Interim Order extending the stay on the exclusion were mailed on January 20, 2012.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Lewis-Taylor 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 January 20, 2012.

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 officer issuing the Notice of Exclusion. The officer's written report stated, in summary, that on December 31, 2011, Mr. Lewis-Taylor was contacted while standing "within the dripline" of the bus shelter located on the west side of 122nd and

E Burnside. The report indicates that at the time of the contact Mr. Lewis-Taylor was subject to TriMet Exclusion number 197321.

Mr. Lewis-Taylor received a Notice of Exclusion on December 31, 2011, for allegedly violating TMC 28.15C by engaging in conduct constituting the crime of Interfering with Public Transportation under ORS 166.116. 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 knowingly enters or remains unlawfully in or on a public transit vehicle or public transit station.

Mr. Lewis-Taylor was mailed a Notice of Hearing on January 20, 2012 to two addresses for his rescheduled hearing. One Notice was returned by the U.S. Mail Service. The other Notice was not returned. A voicemail message was also left for Mr. Lewis-Taylor providing the date, time, and place of his hearing. Mr. Lewis-Taylor did not contact the Hearings Office prior to the hearing requesting that the hearing be rescheduled. Mr. Lewis-Taylor 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 8).

The Hearings Officer finds it is more probable than not that on December 31, 2011, Mr. Lewis-Taylor was subject to a TriMet exclusion prohibiting him from entering TriMet property. The Hearings Officer finds it more probable than not that Mr. Lewis-Taylor, while subject to a TriMet exclusion did enter onto TriMet property. The Hearings Officer finds that it is more probable than not that on December 31, 2011, Mr. Lewis-Taylor did violate ORS 166.116. The Hearings Officer finds the Notice of Exclusion issued to Mr. Lewis-Taylor on December 31, 2011, is valid

Special Exceptions: The Hearings Officer finds there is no evidence in the record to suggest that Mr. Lewis-Taylor 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. The Hearings Officer notes that Mr. Lewis-Taylor was subject to an Exclusion on December 31, 2011, and has received two additional exclusions since that date. The Hearings Officer notes that testimony was taken at the hearing related to Mr. Lewis-Taylor's January 3, 2012, Exclusion which indicated that Mr. Lewis-Taylor has engaged in violent, offensive and criminal conduct while utilizing TriMet services, and that Mr. Lewis-Taylor's continued use of the system creates a safety risk to system staff and passengers.

ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer sustains the Notice of Exclusion issued to Mr. Jermaine K. Lewis-Taylor on December 31, 2011.

2. Length of the Exclusion:

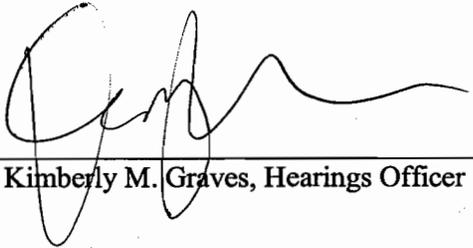
The exclusion shall become effective with this Order, on February 15, 2012, and shall conclude on April 15, 2012, at 5:00 p.m.

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 February 10, 2012, not more than five (5) business days following the hearing, and will become final on February 15, 2012.
5. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: February 10, 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	Notice of Hearing	Hearings Office	Received
6	Statement of Rights	Hearings Office	Received
7	Request to Reschedule	Hertzler, Officer Gabe	Received
8	Hearing Notice	Hearings Office	Received