



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

TriMet vs. Leslie Svenson

CASE NO. 3120573

(TriMet Exclusion Number 151328)

HEARING DATE: December 11, 2012

APPEARANCES:

Excluded party did not appear

Officer Kelley Bertrand, on behalf of TriMet

HEARINGS OFFICER: Mr. Gregory J. Frank

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. Leslie Svenson ("Svenson") on November 20, 2012. The case was forwarded to the City of Portland Hearings Office on November 27, 2012. The Hearings Office mailed a Notice of Hearing to the parties on November 28, 2012, within the time prescribed in the TriMet Code. The notice contained the required information concerning Svenson's rights in the hearing process. The hearing was rescheduled and a new Notice of Hearing was mailed on December 5, 2012.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Svenson when he was excluded. The notice did reference 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, based upon the testimony of Police Officer Bertrand ("Bertrand") that Svenson has received numerous confrontational contacts with TriMet representatives and TriMet passengers. Bertrand testified that Svenson's conduct, while on TriMet property or vehicles, places TriMet representatives and passengers in fear for their safety. The Hearings Officer finds such conduct by Svenson to be an aggravating factor.

Probability that the excluded individual engaged in the conduct supporting the exclusion: Svenson was mailed a Notice of Hearing on November 28, 2012 and a Notice of Rescheduled Hearings on December 5, 2012 (Exhibits 6 and 9). Svenson telephoned the Hearings Office on December 5, 2012 and also on December 7, 2012. A

hearings clerk gave Svenson information about submitting evidence into the record (i.e. fax or mail) and how to request the hearing be rescheduled. Svenson did not provide any written evidence/information to the Hearings Office prior to his scheduled December 11, 2012 hearing. Svenson did not appear at the December 11, 2012 hearing. Police Officer Bertrand ("Bertrand") appeared at the hearing and testified on behalf of TriMet. The Hearings Officer makes this decision based upon the testimony of Bertrand and the documents admitted into the evidentiary record (Exhibits 1 through and including 11).

Svenson was issued a Notice of Exclusion on November 20, 2012 for allegedly violating TMC 28.15 B.(3) [Refuse and Waste]. A person violates TMC 28.15 B.(3) if the person discards or deposits or leaves any rubbish, trash, debris, offensive substance or other solid or liquid waste in or upon a District Vehicle, District Station or District Parking Facility, except in receptacles provided for that purpose.

Bertrand testified that on November 20, 2012, while on regular patrol duty, he observed Svenson at the Central Max Transit Station. Bertrand stated that he observed Svenson standing under the covered bench area of the platform while appearing to relieve himself. Bertrand stated that Svenson had both hands in the area of his crotch. Bertrand stated that when he approached the location where he first saw Svenson, he noticed a "fresh" puddle of yellow liquid. Bertrand stated that Svenson denied urinating on the platform. Bertrand stated that Svenson was hostile and argumentative. Bertrand stated that he could smell a moderate to strong odor of alcoholic beverage coming from Svenson. Bertrand stated that the Central Max Transit Station is a TriMet District station.

The Hearings Officer reviewed Exhibits 6 and 9. The Hearings Officer finds that Bertrand's testimony at the hearing was consistent with statements made in Exhibits 6 and 9.

The Hearings Officer finds the Bertrand's testimony and written statements (Exhibits 6 and 9) are credible and accurately reflect the events leading up to the issuance of the Notice of Exclusion to Svenson on November 20, 2012. The Hearings Officer finds that it is more probable than not that on November 20, 2012 Svenson did urinate while on a TriMet District Station. The Hearings Officer finds it more probable than not that on November 20, 2012 Svenson did violate TMC 28.15B.(3). The Hearings Officer finds that the Notice of Exclusion issued to Mr. Leslie Svenson on November 20, 2012 is valid.

Special Exceptions: Bertrand testified that he and other TriMet representatives have had numerous contacts with Svenson. Bertrand stated that when contacted by TriMet representatives, Svenson is typically intoxicated. Bertrand stated that Svenson typically is verbally aggressive towards TriMet representatives and TriMet passengers. Bertrand stated that Svenson's aggressive behavior and abusive language frequently places TriMet representatives and TriMet passengers in fear for their safety. Bertrand testified that Svenson's aggressive behavior and abusive language creates a serious threat to the safety of TriMet representatives and TriMet passengers. Bertrand stated that Svenson's conduct, on November 20, 2012, was aggressive and confrontational. The Hearings Officer finds, based upon the testimony of Bertrand, that Svenson's conduct, on November 20, 2012 created a serious threat to the safety of others. The Hearings Officer also finds that Svenson should not be eligible for a qualified exclusion.

ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer sustains the Notice of Exclusion issued to Mr. Leslie Svenson on November 20, 2012.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on December 21, 2012, and shall conclude on January 19, 2013.

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 December 13, 2012, not more than five (5) business days following the hearing, and will become final on December 21, 2012.
- 5. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.



Dated: December 13, 2012

Gregory J. Frank, Hearings Officer

GJF:c1/m2

Enclosure

<u>Exhibit #</u>	<u>Description</u>	<u>Submitted by</u>	<u>Disposition</u>
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	Hillsboro Police Dept. Report	Turner, Anna	Received
5	Mailing List	Hearings Office	Received
6	Hearing Notice	Hearings Office	Received
7	Statement of Rights	Hearings Office	Received
8	Request for Reset/Excusal	Bertrand, Officer Kelley	Received
9	Notice of Hearing	Hearings Office	Received
10	Returned Mail (verified)	Hearings Office	Received
11	Returned Mail (verified)	Hearings Office	Received