

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

TriMet vs. Riley Forrest Norby

CASE NO. 3120615

(TriMet Exclusion Number 176770)

HEARING DATE: January 10, 2013

APPEARANCES:

Mr. Riley Norby, 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 Mr. Riley Forrest Norby on December 13, 2012. The case was forwarded to the City of Portland Hearings Office on December 27, 2012. The Hearings Office mailed a Notice of Hearing to the parties on December 27, 2012, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Norby's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Norby 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 officer issuing the Notice of Exclusion. The officer's written report stated: "On 12/13/12 at approximately 2115 hrs, I was advised by other officers on scene that a male named Riley Norby was smoking a cigarette on the platform of the

Beaverton TC MAX. I contacted Riley and asked him if he had been smoking on the platform even with signs that say no smoking. I have probable cause to exclude Riley for smoking on the platform.”

Mr. Norby was issued a Notice of Exclusion on December 13, 2012 for allegedly violating TMC 28.15 A. (2) [Smoking]. A person violates TMC 28.15 A. (2) if the person smokes tobacco or any other substance, carries any lighted or smoldering substance, in any form on a TriMet Vehicle or within any space or area where posted signage prohibits smoking.

Mr. Norby appeared at the hearing and stated that he was smoking while at the Beaverton Transit Center, but that he was smoking on the far side of the parking lot and was not near the platform. Mr. Norby stated that he was smoking in an area where approximately 6 other people were smoking. Mr. Norby stated that he put out his cigarette before he entered onto the platform, and that he was not smoking on the platform. Exhibits 1 through, and including, 7 were received into the record without objection.

The Hearings Officer finds that TriMet has the burden to present sufficient information to prove that the Notice of Exclusion was validly issued. The Hearings Officer finds that the conduct described in the report from TriMet is based on the observations of an unnamed officer, and not the observations of the writer. The Hearings Officer finds that the information provided by TriMet is not sufficient to overcome the testimony of Mr. Norby. The Hearings Officer finds that TriMet has failed to meet its burden with respect to the Notice of Exclusion issued to Mr. Norby on December 13, 2012. The Hearings Officer finds the Notice of Exclusion issued to Mr. Norby on December 13, 2012 is not valid.

ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer sets aside the Notice of Exclusion issued to Mr. Norby on December 13, 2012.

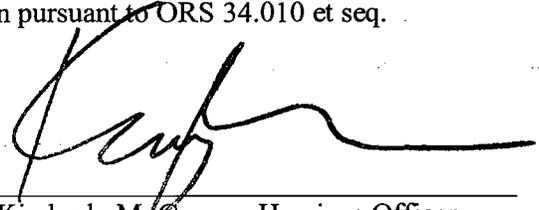
2. Length of the Exclusion:

The exclusion shall not become effective.

3. This order has been mailed to the parties on January 11, 2013, not more than five (5) business days following the hearing, and will become final on January 23, 2013.

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

Dated: January 11, 2013



Kimberly M. Graves, Hearings Officer

KMG:c1/m2

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
7	Exhibit 5 with notation	Gresham Police Dept.	Received