



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

1900 SW 4th Avenue, Room 3100

Portland, OR 97201

phone: (503) 823-7307 - fax: (503) 823-4347

web: www.portlandoregon.gov/auditor/hearings



HEARINGS OFFICER'S ORDER

TriMet vs. Leslie Svenson

CASE NO. 3130026

(TriMet Exclusion Number 212543)

HEARING DATE: January 29, 2013

APPEARANCES:

Mr. Leslie Svenson, Excluded Party

Officer Anthony Cristofaro, for 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. Leslie Svenson on January 5, 2013. The case was forwarded to the City of Portland Hearings Office on January 17, 2013. The Hearings Office mailed a Notice of Hearing to the parties on January 18, 2013, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Svenson's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Svenson 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. Officer Cristofaro appeared and testified on behalf of TriMet. Officer Cristofaro testified that on January 5, 2013 he was conducting fare inspections on a westbound MAX train when he recognized Mr. Svenson from previous contacts. Officer Cristofaro testified that he was aware that Mr. Svenson was subject to an exclusion from TriMet property. Officer Cristofaro testified that he checked the TriMet exclusion list and found that Mr. Svenson's prior exclusion was until January 15, 2013.

Mr. Svenson received a Notice of Exclusion on January 5, 2013 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 (1) knowingly enters or remains unlawfully in or on a public transit vehicle or public transit station, (2) knowingly interferes with the provision or use of public transportation services (i.e. interferes with the movement of a public transportation vehicle), (3) while on a public transit vehicle/station engages in disorderly conduct, or (4) subjects a public transportation passenger, employee, agent or security officer or transit police officer to offensive physical contact.

Mr. Svenson appeared at the hearing and stated that he understands that he was excluded on January 5, 2013 and that he shouldn't have been riding TriMet. Mr. Svenson indicated that he was riding TriMet to get to his P.O. Box to get his mail. Mr. Svenson indicated that he would like to request a qualified exclusion so he can get to where he needs to go during the exclusion. Exhibits 1 through, and including, 6 were received into the record without objection.

The Hearings Officer finds the testimony of Officer Cristofaro to be credible and accurately reflects the events leading up to the issuance of the Notice of Exclusion issued to Mr. Svenson on January 5, 2013. The Hearings Officer finds it is more probable than not that on January 5, 2013, Mr. Svenson was subject to a TriMet exclusion prohibiting him from entering TriMet vehicles/stations. The Hearings Officer finds it more probable than not that Mr. Svenson, while subject to a TriMet exclusion did enter a TriMet MAX train. The Hearings Officer finds that it is more probable than not that on January 5, 2013, Mr. Svenson did violate ORS 166.116 by entering a MAX train at a time when he was excluded from all TriMet property. The Hearings Officer finds the Notice of Exclusion issued to Mr. Svenson on January 5, 2013 is valid

Special Exceptions: The Hearings Officer finds there is sufficient evidence in the record to suggest that Mr. Svenson is transit dependent and needs access to TriMet to meet his basic needs and legal obligations.

Officer Cristofaro, at the hearing, indicated that he objects to the issuance of a qualified exclusion for Mr. Svenson. Officer Cristofaro testified that he has had several other contacts with Mr. Svenson and that Mr. Svenson is frequently intoxicated while on TriMet property. Officer Cristofaro testified that Mr. Svenson has been so intoxicated, while on TriMet property, that officers have had to take him to a detox facility. Officer Cristofaro testified that Mr. Svenson has fought with officers in the past on TriMet property when he was taken into custody. Officer Cristofaro testified that he believes that Mr. Svenson's presence on TriMet property creates a risk of harm to TriMet passengers, personnel and officers.

The Hearings Officer considered that statement of Officer Cristofaro, the facts presented in the current matter, and the qualified exclusion request by Mr. Svenson and concluded that it was appropriate to issue a very limited qualified exclusion to Mr. Svenson. Officer Cristofaro stated that he was in support of a very limited qualified exclusion.

Mr. Svenson shall be permitted on Mondays between 9:00 a.m. and 12:00 p.m. (noon) to ride the Blue line MAX train between the Willow Creek/SW 185th Ave TC MAX station and the Hatfield Government Center MAX station.

ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer modifies the Notice of Exclusion issued to Mr. Svenson on January 5, 2013.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on February 8, 2013, and shall conclude on April 9, 2013.

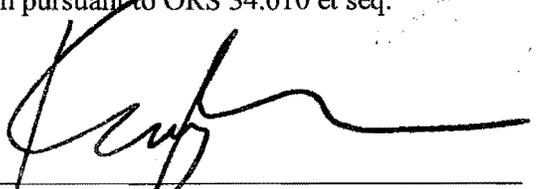
3. Scope of the Exclusion:

Mr. Svenson shall be permitted on Mondays between 9:00 a.m. and 12:00 p.m. (noon) to ride the Blue line MAX train between the Willow Creek/SW 185th Ave TC MAX station and the Hatfield Government Center MAX station.

4. This order has been mailed to the parties on January 31, 2013, not more than five (5) business days following the hearing, and will become final on February 8, 2013.

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

Dated: January 31, 2013



Kimberly M. Graves, Hearings Officer

KMG:c2/ml

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