



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

TriMet vs. Kristina V. Gromysh

CASE NO. 3130180

(TriMet Exclusion Number 196739)

HEARING DATE: April 23, 2013

APPEARANCES:

Ms. Kristina Gromysh, Excluded Party

TriMet did not appear

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 Ms. Kristina V. Gromysh on April 6, 2013. The case was forwarded to the City of Portland Hearings Office on April 11, 2013. The Hearings Office mailed a Notice of Hearing to the parties on April 11, 2013, within the time prescribed in the TriMet Code. The notice contained the required information concerning Ms. Gromysh's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Ms. Gromysh when she 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 April 6, 2013 he observed a female subject "about to cross the trackway from the eastside platform to the center transit platform." The sergeant writes that he called out to her to not cross the track, but that she ignored the directive. The sergeant writes that he contacted the female and identified her as Ms. Gromysh. The sergeant writes that he intended to issue Ms.

Gromysh a warning about her conduct, but that Ms. Gromysh was argumentative and it was clear that she would not change her conduct with just a warning. The sergeant writes that he issued Ms. Gromysh an exclusion for crossing the tracks. The sergeant writes that there is clearly posted signage which reads "Do Not Cross Trackway."

Ms. Gromysh received a Notice of Exclusion on April 6, 2013 for allegedly violating TMC 28.15 D (4) (Interference/Trespass on Right-of-Way). A person violates TMC 28.15 D (4) (Interference/Trespass on Right-of-Way) if the person fails to obey a TriMet authorized posted directive or prohibition pertaining to entering, crossing or traveling upon the right-of-way. A person also violates TMC 28.15 D (4) (Interference/Trespass on Right-of-Way) if the person enters upon or remains upon the right-of-way of the light rail or commuter transit line so as to create a hazard to that person or interfere with the passage of a District Vehicle.

Ms. Gromysh appeared at the hearing and testified that she believes the exclusion is "too harsh". Ms. Gromysh testified that it was dark and she "didn't know" that she was crossing the tracks. Ms. Gromysh testified that she was already on the tracks when the sergeant yelled for her to get off the tracks, so she crossed to the other side to exit the tracks. Exhibits 1 through, and including, 6 were admitted into the record without objection.

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 Ms. Gromysh on April 6, 2013. The Hearings Officer finds it is more probable than not that on April 6, 2013 Ms. Gromysh violated TMC 28.15D4 by failing to obey a TriMet authorized posted directive pertaining to entering, crossing or travelling upon the right-of-way, and by entering onto the trackway in a manner which created a hazard to herself and other district passengers and personnel. The Hearings Officer finds the Notice of Exclusion issued to Ms. Gromysh on April 6, 2013 is valid

Special Exceptions: The Hearings Officer finds there is sufficient evidence in the record to suggest that Ms. Gromysh is transit dependent and needs access to TriMet to continue her schooling. The Hearings Officer finds that on Monday, Wednesday and Friday between 8:00 a.m. and 5:30 p.m. and Tuesdays and Thursdays between 12:00 p.m. and 5:00 p.m. Ms. Gromysh shall be permitted to ride bus #20 between SE 162nd/Stark and Mt Hood Community College.

ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer modifies the Notice of Exclusion issued to Ms. Gromysh on April 6, 2013.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on May 3, 2013, and shall conclude on July 31, 2013.

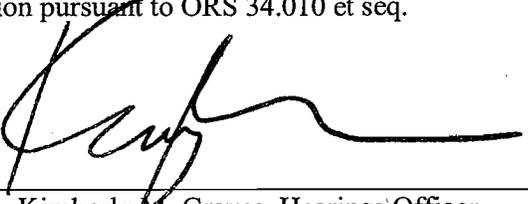
3. Scope of the Exclusion:

The Hearings Officer finds that on Monday, Wednesday and Friday between 8:00 a.m. and 5:30 p.m. and Tuesdays and Thursdays between 12:00 p.m. and 5:00 p.m. Ms. Gromysh shall be permitted to ride bus #20 between SE 162nd/Stark and Mt Hood Community College.

4. This order has been mailed to the parties on April 26, 2013, not more than five (5) business days following the hearing, and will become final on May 3, 2013.

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

Dated: April 26, 2013



Kimberly M. Graves, Hearings Officer

KMG:c2/ml

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal Form page 2	Garmon, Anna	Received
2	TriMet Fare Inspection System printout	Garmon, Anna	Received
3	Notice of Exclusion	Garmon, Anna	Received
4	Mailing List	Hearings Office	Received
5	Notice of Hearing	Hearings Office	Received
6	Statement of Rights	Hearings Office	Received