



CITY OF
PORTLAND, OREGON
OFFICE OF THE CITY AUDITOR
Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF TIFFANIE CASPER

CASE NO. 1090272

DESCRIPTION OF VEHICLE: Acura Integra (OR 625CAN)

DATE OF HEARING: December 22, 2009

APPEARANCES:

Ms. Tiffanie Casper, Appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

Ms. Casper appeared at the hearing and testified on her own behalf. Ms. Taylor Dodge and Ms. Alison Hector appeared at the hearing and testified as witnesses on behalf of Ms. Casper. The Hearings Officer makes this decision based upon the testimony of Ms. Casper, Ms. Dodge, Ms. Hector and the documents admitted into the evidentiary record (Exhibits 1 through and including 7).

Ms. Casper testified that the evening before her vehicle was towed, she, and two friends, were returning to northwest Portland. Ms. Casper stated that she observed, in the general area, temporary no parking signs. Ms. Casper testified that she drove around the area for some time looking for a blockface with no temporary no parking signs. She stated that the blockface where she ultimately parked did not have any temporary no parking signs. She stated that during her parking action she observed another vehicle that appeared to want to park in the area so she pulled forward to allow that vehicle room to park. Ms. Casper stated that when she returned, the next morning, to retrieve her vehicle there the vehicle was gone and there were temporary no parking signs on the blockface.

Ms. Dodge testified that she resides in the area where Ms. Casper parked her vehicle and was aware that temporary no parking signs were placed in the general area but not on the blockface where Ms. Casper's vehicle was towed. Ms. Dodge testified that she was with Ms. Casper when she parked her vehicle the night before it was towed. Ms. Dodge stated that Ms. Casper, with help from Ms. Dodge and Ms. Hector, spent time that evening driving the area looking for a blockface with no temporary no parking signs. Ms. Dodge stated that when Ms. Casper parked her vehicle there were no temporary no parking signs on the blockface, while there were many signs on other blockfaces in the general area. Ms. Dodge, whose vehicle was parked in the general area, stated that she considered moving her vehicle to the blockface where Ms. Casper parked because it was closer to her apartment.

Ms. Hector testified that she was one of the passengers in Ms. Casper's vehicle when Ms. Casper parked her car (the evening before it was towed). Ms. Hector stated that at approximately 8:30 p.m. Ms. Casper and her passengers arrived in the area where the vehicle was towed. Ms. Hector stated that they searched for a block that did not have temporary no parking signs. Ms. Hector stated that no temporary no parking signs were on the blockface where Ms. Casper parked. Ms. Hector stated that the next day, the day Ms. Casper's vehicle was towed, signs were present in the morning.

The Parking Enforcement Officer who ordered Ms. Casper's vehicle towed on December 14, 2009 submitted a written "Tow Hearing Report" and a "Violation Notice Data Sheet." (Exhibits 5 and 6) Exhibit 5, the Tow Hearing Report, contains a statement by the Parking Enforcement Officer: "Routine street cleaning – given notices to all residents T.V announcement – barricade up & verified 24 Hrs advance (see picture) – proceeded with tow." The Parking Enforcement Officer notes (Exhibit 5) that the temporary no parking signage was the same from "NW 16th/Burnside to NW 21st/Marshall." Exhibit 6 includes two pictures. The picture to the left is the rear of Ms. Casper's vehicle with no signs visible. The picture to the right shows an empty parking space, the backside of a temporary no parking sign, and the front of what appears to be a different vehicle (not Ms. Casper's vehicle).

The Hearings Officer finds the testimony of Ms. Casper, Ms. Dodge and Ms. Hector to be credible. The Hearings Officer also finds no reason to doubt the credibility of the Parking Enforcement Officer's statement (Exhibit 5). However, when balancing the credibility of Ms. Casper and her witnesses against the statement of the Parking Enforcement Officer, the Hearings Officer finds Ms. Casper and her witnesses to be more credible. The Hearings Officer finds that Ms. Casper and her witnesses were present at the hearing and the Hearings Officer was able to ask them questions and assess their responses in the context of credibility. The Hearings Officer finds that the Parking Enforcement Officer who ordered Ms. Casper's vehicle towed was not present and the Hearings Officer could not ask clarifying questions or assess the Parking Enforcement Officer's testimony.

The Hearings Officer notes that the photos provided by the Parking Enforcement Officer did not corroborate the Parking Enforcement Officer's written testimony. The Hearings Officer notes that there is a picture of the rear end of Ms. Casper's vehicle; but, there is no temporary no parking sign shown in that picture. The other picture does show the backside of a temporary no parking sign close to a corner of the blockface but does not show Ms. Casper's vehicle. The Hearings Officer has no way, using the photos, to determine if any signs were sufficiently close to Ms. Casper's vehicle to give her notice that the entire blockface was temporarily parking restricted.

The Hearings Officer finds that on the evening Ms. Casper parked her vehicle, no temporary no parking signs were present and therefore temporary no parking signage, on this blockface, was not adequate. The Hearings Officer acknowledges that in all likelihood signs on the blockface were "verified" more than 24 hours before the parking restriction went into effect. However, based upon the evidence in the record, signs were not on the blockface when Ms. Casper parked the evening before her vehicle was towed.

The Hearings Officer must find a tow valid if the Hearings Officer finds that the person ordering the tow followed all relevant laws/rules. In this case the relevant laws/rules are found in Portland City Code ("PCC") Title 16. In particular, PCC 16.30.210 A.1 and D apply to this case.

The Hearings Officer finds that PCC 16.30.210 A.1 and D permit a vehicle to be towed, at the owner's expense, if the vehicle is parked in violation of a temporary or permanent parking restriction if the temporary parking restriction signage is placed more than 24 hours before a vehicle is towed. The Hearings Officer finds that the intent of PCC 16.30.210 D is to assure vehicle owners have adequate notice of the temporary parking restrictions. In this case the temporary parking restriction was for a short window of time to permit street sweeping to occur.

The Hearings Officer finds, irrespective of the "verification" of signs more than 24 hours in advance and the existence of the signs on the date of a tow is ordered, a reasonable person is not given adequate notice of the temporary no parking restriction if the signs are not present when the person parks their vehicle. In this case, the only evidence in the record related to signage when the vehicle was parked is that of Ms. Casper and her witnesses and all of them testified that no signs were present on the blockface when Ms. Casper parked. Therefore, despite the technical satisfaction of PCC 16.30.210 D the Hearings Officer must find that Ms. Casper was not given adequate notice and must find the tow not valid.

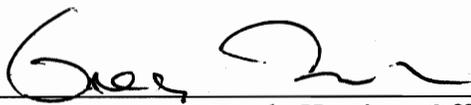
The Hearings Officer notes that the Parking Enforcement Officer would have no way of knowing the signs were not present on a blockface the evening before the tow. The Hearings Officer, however, cannot find a tow valid if the person who parked their vehicle had no notice that a parking restriction was to be enforced at the location where the person parked his/her vehicle.

The owner or other persons who have an interest in the vehicle are not liable for the towing and/or storage charges.

It is ordered that the vehicle shall be immediately released, if still held, and any money heretofore paid for towing and/or storage charges shall be returned to the vehicle owner.

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

Dated: December 23, 2009
GJF:cb/rs



Gregory J. Frank, Hearings Officer

Bureau: Parking Enforcement
Tow Number: 24633

Enclosure

If a refund has been authorized, it will be sent from the City's Accounts Payable Office. Please allow at least 3 weeks.

Exhibit #	Description	Submitted by	Disposition
1	Letter	Casper, Tiffanie	Received
2	Tow desk printout	Hearings Office	Received
3	Hearing notice	Hearings Office	Received
4	Tow hearing info. sheet	Hearings Office	Received
5	Tow Hearing Report	Parking Enforcement	Received
6	Violation Notice Data Sheet	Parking Enforcement	Received
7	Tow Receipt	Casper, Tiffanie	Received