

February 19, 2010

Mr. Thomas Prendergast.
President
MTA New York City Transit
2 Broadway, 30th Floor
New York, NY 10004

Re: **Dereliction of Duty, Unauthorized
Dual Employment, Falsification of
Records, Inadequate Procedures and
Supervision
MTA/OIG # 2009-16**

Dear Mr. Prendergast:

The MTA Office of the Inspector General (OIG) has concluded an investigation into an anonymous allegation that Edward J. Billitteri (Billitteri), a New York City Transit (NYC Transit) Maintenance Supervisor, spends most of his shift sleeping in the office and leaves his NYC Transit shift early in order to go to his second job. The complainant further alleged that Billitteri is able to leave early without consequence because employees do not record their time in or out. Finally, it was alleged that Billitteri's unacceptable behavior has encouraged others to do the same.

Our investigation substantiated the most serious allegations against Billitteri. We also identified other individuals for whom we recommend discipline and uncovered certain supervisory and procedural issues that should be addressed.

INVESTIGATION

Background

Edward J. Billitteri is a NYC Transit Maintenance Supervisor Level One (M/S1) assigned to the 11:00 p.m. to 7:00 a.m. shift at the NYC Transit Hydraulics Infrastructure and Electro-Mechanical facility located at the Broadway/Lafayette Street Subway Station.

According to the NYC Transit Maintenance Of Way (MOW) Infrastructure and Hydraulics Acting General Superintendent, Billitteri's job responsibilities include supervising a crew of

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seven hourly workers, traveling to fan and pump rooms and inspecting the crew's work¹. When the work assigned is near subway tracks, the M/S 1 is responsible for coordinating the necessary service interruption or delay in service with Rapid Transit Operations, and to set up the appropriate flagging. When a job involves flagging, the M/S1 is required to be present on the tracks to supervise his crew.

The Acting General Superintendent also informed OIG that at the beginning of the shift, an M/S1 collects payroll sheets, confirms who is supposed to be working and ascertains the whereabouts of missing mechanics by contacting the control room. That process should take no more than the first 15 minutes of the shift. Next, the M/S1 gives assignments and reads the "rule of the day." The M/S1 then dispatches the members of the crew to their various assignments. To perform the job, an MS1 should be in the field supervising members of the crew or checking their work a minimum of 5.5 hours of the 8 hour shift (i.e., from no later than 12:30 a.m. to 6:00 a.m.). The paperwork an M/S1 is required to complete should take no more than 1.5 hours per shift.

October 3, 2008, Floor Check

At about 4:00 a.m. on Friday, October 03, 2008, OIG investigators entered the NYC Transit - Hydraulics Infrastructure and Electro-Mechanical facility located at the Broadway/Lafayette Street, Lafayette Street Subway Station. NYC Transit Superintendent Francis Oquendo (Oquendo) let the investigators into the facility and told them that he was alone except for one other employee.² Shortly after entering that facility, the investigators observed Electro-Mechanic Freddie Wright sleeping on a bench. He was awakened at about 4:10 a.m. at which time he told the investigators that he was on lunch from 4:00-4:30 and "got sleepy" after his meal.

At about 4:30 a.m. the investigators attempted to enter the M/S1 locker room but the door was locked from the inside. M/S1 Carlos Marquez, who arrived at the location in the interim, began knocking on the door. Billitteri opened the door approximately a minute after the knocking commenced. When asked why he was not in the field, Billitteri responded, "I just got back a little while ago." He later changed his statement and claimed that he had returned to the facility to change about an hour earlier. Billitteri further stated that he was tired and not feeling well. Then, while being questioned about his reasons for locking himself in the room, Billitteri dropped to his knees and said he was diabetic, was on medication and was not feeling well. He refused medical assistance.

¹ A description of M/S1 job responsibilities is also contained in Rule 12:23 of the Rules & Regulations Governing Employees of MTA New York City Transit (Revised November 2003).

² Oquendo admitted that he did not know where M/S1 Billitteri was at the time the OIG entered into Broadway/Lafayette, but assumed Billitteri was with his crew at Roosevelt Island.

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Billitteri subsequently gave additional conflicting reports about the reason for his presence in the locker room. In a written Memorandum submitted to NYC Transit later that day, he claimed he returned to Broadway/Lafayette Street Subway Station at about 3:00 a.m. to prepare paper work. He wrote that he “started the paperwork for week, went to locker room to change as I was wet from 4107 P.R.” (i.e. his earlier trip to pump room # 4107). He opened the door when the OIG investigator knocked. This statement, which he wrote at Oquendo’s request, is devoid of any mention of sleeping or passing out from a diabetic condition. Oquendo observed a videotape made by OIG during the October 3, 2008 floor check and advised investigators that when Billitteri opened the door, he was wearing the same pants he had been wearing earlier in his shift.

On December 12, 2008, OIG interviewed Billitteri under oath about the incident and he provided yet another explanation. Billitteri now claimed that he was in the locker room to change his wet socks and “blacked out.” Billitteri stated that changing his socks was the last thing he remembered until the OIG woke him up two hours later. His explanation for using the interior dead bolt to lock himself in the locker room was that it was his “habit” to do so. Billitteri again stated that he is diabetic and that it was his own fault he “blacked out” because he had been improperly self-medicating his diabetic condition.

Billitteri stated in his December 12, 2008 testimony that he intentionally omitted the reference to his alleged diabetic episode in the official report he submitted to Oquendo because he did not want NYC Transit to know about his condition.

Call In Sheets

According to the Acting General Superintendent, maintainers and maintenance supervisors are required to make hourly phone calls to the control desk at the Hydraulics Infrastructure and Electro Mechanical facility, at 40 Sands Street in Brooklyn (Sands Street). This has been the required practice in NYC Transit Hydraulics Infrastructure and Electro-Mechanical Unit for more than twenty years. Those hourly calls are recorded on a call in sheet by the control desk men.

The 11:00 p.m. to 7:00 a.m. shift Supervisors Call In Sheet for October 3, 2008 reflected entries indicating Billitteri called in from Roosevelt Island at 0100, 0200, 0315 and 0400 hours. Some of those entries were false as Billitteri admittedly returned to Broadway/Lafayette before 3:00 a.m. and was in the M/S1 locker room until our investigators woke him up at approximately 4:30 a.m.

NYC Transit Electro-Mechanic Courtney Simpson (Simpson) was assigned to the control desk at Sands Street on the night in question. In a sworn statement to OIG, Simpson admitted that despite oral instructions he received when he was first assigned the job, he routinely made entries on those call in sheets that were not reflective of actual telephone calls. This was especially true at the start and end of shifts when he routinely made entries upon assumptions of where

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employees should be at those times. Simpson stated that Billitteri asked him numerous times during the last six or seven years to “carry him with his guys” which, Simpson explained, meant making entries for Billitteri based upon the location of his maintainers as opposed to actual calls. Simpson complied with those requests.

Simpson and another desk man, NYC Transit Electro-Mechanic Vincent Cooper, informed OIG that there are no detailed written guidelines about how to fill out the call in sheets, or what to do if an employee does not call in during the shift.

The OIG determined that written policies regarding call in sheets are incomplete. The most troubling insufficiency is that there is no written procedure that the desk man should follow in the event that an employee fails to call in for several hours. This lack of procedure presents a potential safety and/or security hazard, as well as a time-keeping issue, where employees assigned to various locations could be unaccounted for during several hours.

Time-Keeping

Our investigation further showed that there is no supervisory verification of the sign-out time of supervisors assigned to Broadway/Lafayette Street Station who sign out from Sands Street.

Dual Employment

OIG confirmed that Billitteri has engaged in outside employment as an electrician for decades without written authorization as required by NYC Transit Rule 4 (g) and Policy/Instruction 4.23.2 (4/19/00). His most recent outside employment was with an electrical contractor, Kleinberg Electric. Significantly, Billitteri admitted that while employed by NYC Transit he knowingly worked as an electrician for private contractors on NYC Transit construction projects.

His personnel file reflects that on October 9, 1979, he signed a Dual Employment Questionnaire in which he denied having any outside employment. On that same day he signed a document which stated, “If there is any change in my employment status as indicated on Dual Employment Questionnaire, I will immediately report the change to my superior and will submit a new Dual Employment Questionnaire.” Billitteri claimed that he believed he complied with all of his dual employment obligations by orally informing his supervisors that he worked as an electrician on the side. Despite the signed documents in his personnel file, he specifically denied any knowledge of any NYC Transit regulation requiring him to submit a dual employment form. This denial is particularly troubling given his employment as an M/S1 and his responsibility for ensuring that his supervisees follow dual employment policies and procedures as required.

Oquendo admitted that he knew of Billitteri’s dual employment yet never determined that he had written approval. Indeed, he was unsure about who would be responsible for obtaining such a dual employment form or where it should be filed.

In addition, two of the five employees of the Electro Mechanical Infrastructure unit interviewed by OIG claimed a lack of familiarity with dual employment requirements.

FINDINGS

1. While on duty on October 3, 2008, Billitteri locked himself in the Broadway/Lafayette Street Subway Station M/S1 Locker Room for approximately 2 hours and either slept or was passed out in that room while reportedly supervising his crew at another location in violation of Transit Rules 4(a) and 11(e).
2. Billitteri provided conflicting reports about the reasons for locking himself in the M/S 1 locker room in oral, written and sworn statements provided to NYC Transit and OIG. His false statements to NYC Transit and OIG violate Transit Rules 4(a), 8(a) and 11(f) as well as §1.07 MTA Code of Ethics (Cooperation with Audits and Investigations), which declares that "Employees must cooperate fully and honestly with audits and investigations conducted by the MTA Inspector General"
3. To the extent that Billitteri was truthful about having a medical condition so uncontrolled that he passed out, such condition and Billitteri's failure to disclose it to NYC Transit, present serious safety concerns since as an M/S1 he is required to work with machinery and in proximity to the tracks.
4. Billitteri induced Electro-Mechanic Control Deskman Courtney Simpson, to regularly falsify NYC Transit documents in violation of NYC Transit Rules 4(a), 8(a) and 11(e).
5. Simpson falsified the 11:00 p.m. - 7:00 a.m. Supervisor Call In Sheet on October 3, 2008 and other dates in violation of Transit Rules 4(a) and 8(a).
6. Billitteri has engaged in outside employment as an electrician for more than twenty years without obtaining the requisite written dual employment authorization, in violation of NYC Transit Rules 4(a) and 4(g).
7. While employed by NYC Transit, and without obtaining prior approval, Billitteri worked for at least one private electrical contractor on NYC Transit jobs in violation of NYC Transit Rules 4(a) and 4(g). In addition, such conduct potentially constitutes a conflict of interest as prohibited by NYC Transit Rules 4(a) and 12(b)(2) as well as MTA Code of Ethics §4.01 and Public Officers Law §74.
8. Oquendo knew of Billitteri's dual employment and never inquired whether he had complied with the rules in violation of Transit Rules 4(a), 4(g), 6(a) and 8(a).

9. NYC Transit, Electro-Mechanic, Freddie Wright, was sleeping on Transit Property at the Broadway/Lafayette Street Station on October 3, 2008 in violation of NYC Transit Rules 4(a) and 11(e).
10. Time keeping procedures for supervisors in the NYC Transit Broadway/Lafayette - Hydraulics Infrastructure and Electro-Mechanical are inadequate to insure accurate time keeping records when the supervisors sign off duty from Sands Street.
11. Written policies and procedures for control desk men at Sands Street are either inadequate or non-existent. Specifically, the existing written policies and procedures do not set forth the purpose of the call in sheets nor do they state what procedure that the desk man should follow in the event that an employee fails to call in for several hours.

RECOMMENDATIONS

We make the following recommendations:

1. M/S1 Edward Billitteri, should be appropriately disciplined for the conduct described in Findings 1, 2, 4, 6 and 7.
2. If Billitteri remains in his current position, he should be required to obtain appropriate medical clearance in light of his job responsibilities that require him to come into close proximity to tracks and machinery.
3. Superintendent Francis Oquendo should be appropriately trained regarding dual employment rules and his responsibilities under those rules.
4. Electro-Mechanic Courtney Simpson should be disciplined for falsifying the 11:00 p.m.- 7:00 a.m. Supervisor Call Sheet on October 3, 2008 and other dates in violation of Transit Rules 4(a) and 8(a).
5. Electro-Mechanic Freddie Wright should be disciplined for sleeping on NYC Transit Property on October 3, 2008 in violation of Transit Rules 4(a) and 11(e).
6. NYC Transit should consider replacing its current supervisory personnel sign-in procedure with a verifiable system such as a swipe card or biometrics system.
7. NYC Transit should appropriately train all supervisors on the necessity of following dual employment approval procedures.

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8. NYC Transit should create and enforce written guidelines for control desk men with respect to the completion of call in sheets and the procedure to follow when employees fail to call in.

In accordance with 1279(6) of the Public Authorities Law, please advise me within 30 days of your receipt of this letter of any actions you plan to take with regard to the foregoing. If you or anyone on your staff has any questions or need additional information, please feel free to contact me or Frank C. Lanzo, Special Investigative Counsel/Director of Training at 212-878-0012.

I would also like to thank your staff for their assistance and cooperation in this matter.

Very truly yours,

Michael L. Boxer
Special Counsel