

June 2, 2010

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

Re: Sleeping Employees
MTA/OIG #2010-07

Dear Mr. Prendergast:

In February 2010, a complainant brought to the Inspector General's office a video recording he made which he claimed depicted two New York City Transit Communications Support employees asleep on the job between 1:00 p.m. and 1:20 p.m. while an Administrative Manager was talking on the phone nearby. The complainant claimed the video was made in October 2009.

Robert Reiser, Chief of Customer Information & Communications Support identified the sleeping employees as James Bell¹ and Nathaniel Arias,² truck drivers who distribute NYC Transit printed materials throughout the system, and the voice as that of Manager Matthew Zephyr.³

During an OIG interview, Zephyr was shown the video and also identified Bell and Arias as the two sleeping individuals and confirmed that the voice on the video was his. In addition, he identified himself as the Administrative Manager on duty. Zephyr told the OIG that he was unaware that it was a violation of NYC Transit rules to sleep on agency property whether on or off duty. Rather, Zephyr told us that he thought that an employee was free to do as he wished on his lunch hour. He further stated that the video timer indicated that it was 1:00 p.m. which meant that Bell and Arias were on their lunch hour. Zephyr was shown NYC Transit Rule 11(e) and confirmed that he was unaware of it.

¹ James Bell's pass number is 16893. His work tour on January 27, 2010, was 8:00 a.m. - 4:00 p.m.

² Nathaniel Arias' pass number is 37237. His work tour on January 27, 2010 was 7:30 a.m. - 3:30 p.m.

³ Matthew Zephyr's pass number is 30065. His work tour on January 27, 2010 was 6:49 a.m.- 2:56 p.m.

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NYC Transit rules

It is a violation of NYC Transit rules to sleep on Authority property. Specifically, NYC Transit Rule 11(e), Certain Acts of Employees Prohibited, reads, in pertinent part:

11(e) Employees also must not sleep, loaf or lounge, whether on or off duty on Authority property.”

FINDINGS

1. Bell was videotaped sleeping at his work location between 1:00 p.m. and 1:20 p.m. in violation of NYC Transit Rule 11(e).
2. Arias was videotaped sleeping at his work location between 1:00 p.m. and 1:20 p.m. in violation of NYC Transit Rule 11(e)
3. Zephyr failed to perform his managerial duty when he did not enforce or implement NYC Transit rule 11(e).

RECOMMENDATION

1. Consider appropriate discipline for Bell’s, Arias’ and Zephyr’s violations of NYC Transit’s Rules & Regulations and Policy/Instruction.

Please advise me within 30 of any actions you take pursuant to this letter. If you need additional information feel free to contact Chris Prather, Deputy Inspector General, Investigations, at (212) 878-0000.

Very truly yours,

Michael L. Boxer
Special Counsel

Cc: M. Nadel