



Barry L. Kluger
Inspector General

Office of the Inspector General

Metropolitan Transportation Authority
Two Penn Plaza, 5th Floor
New York, New York 10121
212-878-0000

February 19, 2014

Robert Bergen
Executive Vice President
MTA New York City Transit
2 Broadway, 30th Floor
New York, NY 10004

**Re: Compensation and Time Keeping
Policies
MTA/OIG #2013-13**

Dear Mr. Bergen:

The Office of the Inspector General (OIG) investigated a complaint that an employee in the Timekeeping Department of NYC Transit engaged in misconduct involving: Stealing time and hiding her theft by not turning in approved timesheets; rewarding a subordinate for facilitating the theft; and working from home without authorization. Following a careful investigation, including interviews of the complainant, the subject employees, the present controller, former controller and former deputy/acting- controller, of NYC Transit, as well as a review of pertinent documents, we found these allegations to be unsubstantiated.

After making this finding and based on our investigation, the draft version of this report, which we sent to you for comment, made the following two recommendations to enhance accountability and compliance:

1. NYC Transit must adopt a written policy regarding non-represented employees cashing out their compensatory time with clear guidelines about how such requests should be assessed, documented, and approved.
2. As the integrity of the Timekeeping program relies on all employees being held to the same standard, NYC Timekeeping staff should be reinstructed about their obligation to follow policies consistently for all employees, including Timekeeping personnel.

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At the outset of your letter in response dated December 13, 2013, you stated that:

In general, NYC Transit concurs with the draft report's findings and conclusions. We will use the draft report's recommendations to strengthen our internal controls in order to prevent recurrences of the issues identified in your draft report.

Additionally, you responded specifically to both of the above recommendations. As to the second, you made the following statement on behalf of the agency:

We agree with this recommendation. The NYC Transit Controller will instruct all Timekeeping personnel to apply policies consistently for all employees, including those employees assigned to the Office of the Controller. Timekeeping personnel will be instructed to bring any policy deviations to the attention of the Controller for appropriate follow-up and resolution.

We are encouraged by this response and will continue to monitor as appropriate.

Regarding the first recommendation as to compensatory time, however, we have reconsidered it for the reasons more fully explained below.

Cashing Out Compensatory Time

OIG was told by the complainant that a timekeeping employee had been allowed to cash out her accumulated compensatory time, known as OTO, which the complainant said is prohibited, as a reward for overlooking her supervisor's missing timesheets. OIG confirmed that the employee had been allowed to cash-out OTO twice in a six-month period. While we did not substantiate that aspect of the complaint alleging that the cash-out was taken as a reward for improper conduct, we sought to determine whether and under what circumstances a non-exempt, non-represented employee may cash out accumulated compensatory time.

OIG questioned both the former controller and former deputy/acting- controller about the OTO policy delineated in NYC Transit Human Resources Policy/Instruction 6.42 as it relates to non-exempt, non-represented employees. The former controller stated that employees had been allowed to cash out OTO prior to separation in special circumstances. Specifically, he told us that Deputy or Division heads could authorize such payments and that he had received requests for cash out payments from the Senior Vice Presidents of divisions, usually in the form of a memo. The former deputy/acting- controller told us that prior NYC Transit presidents had forwarded such requests that they had received to the controller's office for decisions. Additionally, he told us that: Employees have been allowed to cash-out their OTO in cases of "personal hardship"; these hardships have ranged from healthcare emergencies to being displaced from housing; the practice is informal and there are no guidelines to follow in determining what constitutes a hardship; such payments are rare and the availability of such

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cash-outs has not been disseminated to employees; the requests come both from the heads of departments and directly from employees; there are no files kept by the controller's office documenting the request or the reason for the request; the only record is the deduction of the hours from the employees OTO bank; and that as far as he knows, as the deputy/acting-controller, no request has been refused, except in one case where the employee did not provide requested documentation of the hardship.

According to the current controller, the practice has changed in that he interprets Policy/Instruction 6.42 to mean that pre-separation cash-outs are not allowed and that any requests that an exception be made would be forwarded to the Executive Vice President and the President for approval. Confirming this, you wrote:

The Controller's office has been instructed not to authorize the cash-out of any compensatory time except as authorized by current policy or pursuant to an appropriate waiver by the NYC Transit President or his designee and, should such a waiver be granted in the future, to maintain records of the request, supporting documentation and approval of the waiver. At present there are no plans to modify existing policy to create standards for granting a waiver to the cash-out policy, as cash-out of compensatory time other than at separation is a rare event.

Based on the record before us, including our review of the Policy/Instruction 6.42 and your response, we agree that additional standards for granting a waiver to an existing policy are not necessary. Therefore, we revise our first recommendation as follows:

Revised Recommendation 1

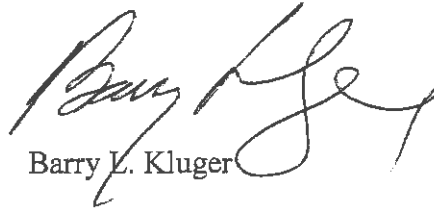
NYC Transit should reinstruct the Office of the NYC Transit Controller not to authorize the cash-out of any compensatory time except as authorized by current policy or pursuant to an appropriate waiver and, should such a waiver be granted in the future, to maintain records of the request, supporting documentation, and approval of the waiver.

Further, unless you inform us to the contrary, we will consider your confirmation of the current policy to be agreement to and implementation of our revised recommendation, which incorporates the language of your confirmation, and we will monitor that implementation as appropriate.

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As always, we appreciate the courtesies and cooperation afforded by you and your staff. If you have any questions please do not hesitate to call.

Very truly yours,

A handwritten signature in black ink, appearing to read "Barry L. Kluger". The signature is fluid and cursive, with the first name "Barry" being more prominent and the last name "Kluger" following in a similar style. The signature is positioned above the printed name.

Barry L. Kluger