



Barry L. Kluger  
Inspector General

## Office of the Inspector General

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New York, New York 10121  
212-878-0000

November 25, 2013

Carmen Bianco  
President  
MTA New York City Transit  
2 Broadway, 30<sup>th</sup> Floor  
New York, NY 10004

**Re: Failure to Work Required Time by  
NYC Transit Maintenance Supervisor  
MTA/OIG #2013-15**

Dear Mr. Bianco:

This Office has concluded an investigation into a complaint that NYCT Department of Subways, Maintenance of Way, Maintenance Supervisor Nicholas Fucci (Fucci) failed to work his required hours. Our investigation determined that Fucci was late to work on 6 occasions and worked less than his required 8 hours without reporting the appropriate leave on his time sheets or to his supervisors. In addition, the investigation uncovered evidence that NYCT lacked appropriate time controls for maintenance supervisors and that NYCT maintenance workers require additional training regarding the requirement to swipe their identification passes.

### INVESTIGATION

Fucci is assigned to the Lubrication Unit of the NYCT Department of Subways, Maintenance of Way Division. He supervises a crew of track maintainers that inspect all the curved tracks in the subway system, make repairs (when needed) and maintain the grease on the subway car wheels. Fucci and his crew use the Broadway Junction (East New York) subway station on the "A" line as their home base. Fucci works 8:00 a.m. to 4:00 p.m., Tuesday through Saturday.

### Surveillance

On January 30, 2013, OIG investigators observed Fucci leave his house at 7:45 a.m., drive to the LIRR Bellmore train station and take the LIRR to the East New York station.<sup>1</sup> After exiting the train, Fucci walked along Van Sinderen Street to the NYCT Broadway Junction subway station where he entered through the emergency door at 8:41 a.m. Fucci did not swipe in at the turnstiles nor did he display his NYCT pass to the Railroad Clerk on duty in the booth. Although

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<sup>1</sup>Fucci was wearing a black-hooded sweatshirt, blue jeans and heavy-duty black shoes.

Fucci was scheduled to be at work at 8:00 a.m., he did not arrive until 8:41 a.m., 41 minutes late. His time sheet did not indicate that he took any leave and stated he worked his entire shift.

On February 5, 2013, OIG investigators conducted another surveillance of Fucci and observed the route on Van Sinderen Street that Fucci previously took to walk from the LIRR East New York station to the NYCT station at Broadway Junction. OIG began surveilling the area at 6:50 a.m. and observed Fucci arrive shortly before 10:00 a.m., when he walked down Van Sinderen Street and down the steps into the Broadway Junction subway station. At 9:55 a.m., Fucci<sup>2</sup> pulled out a large key ring to unlock the emergency door, but it was already unlocked and Fucci entered the system.<sup>3</sup> Fucci did not swipe in at the turnstiles and did not display his NYCT pass to the Railroad Clerk on duty in the booth. OIG investigators observed Fucci board the A train to the Howard Beach Station. OIG investigators then drove to the Howard Beach station and observed Fucci join his crew.<sup>4</sup> Although Fucci was scheduled to be at work at 8:00 a.m., he did not arrive until 9:55 a.m., almost 2 hours late. His time sheet did not indicate that he took any leave and stated he worked his entire shift.

### **NYC Transit Video Camera Surveillance Footage**

OIG investigators reviewed approximately 3 months of NYCT surveillance video tapes for the days when Fucci was scheduled to work. OIG investigators were able to identify Fucci in the video footage based on their familiarity with him during prior surveillances as well as Fucci's easily-identifiable physical characteristics and NYCT clothing/equipment that he often wore/used including a uniform jacket and pants, heavy black work shoes, NYCT paraphernalia and keys to emergency exit gate.

The surveillance footage confirmed Fucci's late arrival to work on the 2 occasions where he was under OIG surveillance (January 30, 2013 and February 5, 2013). In addition, Fucci was observed arriving at work late at the Broadway Junction station on 4 other occasions (December 5, 2012, December 6, 2012, January 18, 2013 and February 6, 2013). On all 6 occasions, Fucci entered the subway through the emergency exit gate and did not swipe his identification card at the turnstiles.

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<sup>2</sup> Fucci was wearing a heavy NYCT uniform jacket, uniform pants, a safety vest, no hat, heavy-duty black work boots and a backpack with a silver thermal coffee mug attached.

<sup>3</sup> OIG investigators observed several people who did not appear to be NYCT employees enter the subway via the unlocked emergency door without paying the appropriate subway fare.

<sup>4</sup> It appeared to OIG investigators that Fucci's crew was not working at the Howard Beach station and was awaiting Fucci's arrival.

### **Interview of Fucci**

In an April 5, 2013 interview, Fucci stated that he had never swiped his identification card to enter his work station. Instead, he used his keys to enter through the emergency door, provided it was not already unlocked. He stated that he was not familiar with Rule 27(e) which required him to swipe. Although he had worked at the Broadway Junction location for 29 years, he never noticed that the emergency door has a large blue sign with white letters next to the handle stating, "All Employees Must Swipe."

Fucci stated that his timesheets were pre-printed and he merely signed them, unless he had a work deviation from his normal 8:00 a.m. to 4:00 p.m. hours requiring a deviation sheet. Fucci stated that his boss John Brown, Superintendent, approved his time sheets, but did not do anything to verify that Fucci actually worked those hours. Fucci characterized it as an "honor system."

Fucci acknowledged that his time sheet for January 30, 2013 reflected that he worked from 8:00 a.m. to 4:00 p.m., that he signed his time sheet affirming that he worked those hours and that he did not file a deviation sheet. Fucci identified himself in a surveillance still photo entering the station through the emergency gate at 8:41 a.m. He admitted being late to work that day.

Fucci acknowledged that his time sheet for February 5, 2013 reflected that he worked from 8:00 a.m. to 4:00 p.m., that he signed his time sheet affirming that he worked those hours and that he did not file a deviation sheet. Fucci identified himself in a surveillance still photo entering the station through the emergency gate at 9:55 a.m. However, after speaking to his attorney, Fucci backtracked and said he was not sure if it was him because the individual in the photo was wearing a jacket with an MTA logo and he did not have such a jacket.<sup>5</sup>

Fucci acknowledged that his time sheet for December 5, 2012 reflected that he worked from 8:00 a.m. to 4:00 p.m., that he signed his time sheet affirming that he worked those hours and that he did not file a deviation sheet. However, OIG investigators observed Fucci (wearing a NYCT uniform jacket) on the surveillance video tape first entering the Broadway Junction subway station through the emergency gate at 10:49 a.m., almost 3 hours after the start of his shift. When shown a still photo of the video by OIG, Fucci admitted the person in the photo was him, but after speaking to his attorney, Fucci backtracked on his identification and claimed the person in the photo was heavier than he was.

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<sup>5</sup> Since Fucci was under almost-constant surveillance that day (walking at street level, entering the subway station, boarding the subway and joining his crew at Howard Beach station), OIG investigators have no doubt that the person on the surveillance footage on February 5, 2013 was, in fact, Fucci.

Fucci acknowledged that his time sheet for December 6, 2012 reflected that he worked from 8:00 a.m. to 4:00 p.m., that he signed his time sheet affirming that he worked those hours and that he did not file a deviation sheet. However, OIG investigators observed Fucci on the surveillance tape first entering the Broadway Junction subway station through the emergency gate at 8:43 a.m., almost 45 minutes after the start of his shift. Fucci stated that the individual in the still photo looked like him, but that he did not own a hat like the one in the photo.

Fucci acknowledged that his time sheet for January 18, 2013 reflected that he worked from 8:00 a.m. to 4:00 p.m., that he signed his time sheet affirming that he worked those hours and that he did not file a deviation sheet. However, OIG investigators observed Fucci (wearing a black-hooded sweatshirt and blue jeans)<sup>6</sup> on the surveillance video tape first entering the Broadway Junction subway station through the emergency gate at 8:54 a.m., almost 55 minutes after the start of his shift. Fucci denied it was him in the still photo, stating he did not wear a pass around his neck nor did he wear jeans with rolled-up cuffs.

Fucci acknowledged that his time sheet for February 6, 2013 reflected that he worked from 8:00 a.m. to 4:00 p.m., that he signed his time sheet affirming that he worked those hours and that he did not file a deviation sheet. However, OIG investigators observed Fucci (wearing a black hooded sweatshirt and blue jeans)<sup>7</sup> on the surveillance tape first entering the Broadway Junction subway station through the emergency gate at 10:00 a.m., 2 hours after the start of his shift. Fucci admitted that the person in the photo was him.

Fucci refused to concede that he was late to work on February 5, 2013 (or on any of the other dates in question apart from January 30, 2013), speculating that he could have gone to another location earlier.<sup>8</sup> However, he could not provide any documentation to OIG that he did so other than his unverifiable claim that he called the NYCT Lubrication Unit Field Office to check in.<sup>9</sup> Despite the fact that he refused to concede being late, he offered excuses for being late. First, he

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<sup>6</sup> OIG investigators observed Fucci wearing a similar outfit during their January 30, 2013 surveillance and on the video tape from February 6, 2013.

<sup>7</sup> OIG investigators observed Fucci wearing a similar outfit during their January 30, 2013 surveillance and on the video tape from January 18, 2013.

<sup>8</sup> Since Fucci was observed walking on Van Sinderen Street, it was likely that he came directly from the LIRR Station at East New York (his usual method of commuting from his home). Had Fucci visited another NYCT subway station earlier in his tour, he would have travelled to Broadway Junction by subway and would have arrived at the station from within the station, not street level.

<sup>9</sup> In fact, such documentation does not exist. Other than Fucci's time sheets (which show that Fucci was assigned to Broadway Junction) and deviation sheets (which show that Fucci was assigned to overtime shifts at other locations on 2 of the dates), the NYCT Lubrication Unit Field Office (located at the Park Place Station) did not maintain any log books or other documentation regarding Fucci's time or location. Accordingly, there is no documentation to substantiate Fucci's claim that he began his shift working at another location. Fucci's supervisor, John Brown, informed OIG that Fucci was required to start his tour at Broadway Junction, except when he had a meeting at the Field Office, and that Fucci would not have started his tour at any other location.

claimed the stress of his daughter's broken leg and his wife's illness could have caused him to be late. He also claimed he did not need to change his work hours on his time sheet to reflect when he was late because he was a supervisor. Since he worked late on occasion or travelled and did not put in for overtime, Fucci insisted it was okay to be late sometimes and that "one hand washes the other."

Fucci insisted that his work crew was still productive even when he was not present since they had a prioritized list of work to be performed and maintenance men did not need supervision (as opposed to track men). He added that he was not there 99% of the time, but at other locations taking care of other business.<sup>10</sup>

### **Interview of John Brown**

In an August 19, 2013 interview, John Brown, told OIG that Fucci did not have permission to arrive late to work, that Fucci was required to identify any lateness on a deviation sheet (as either "Personal Business" or "Other Time Offset") and that his lateness was not an offset to unpaid overtime. Regarding the requirement to swipe, Brown stated he was aware of the requirement, but admitted that he did not enforce the rule with his subordinates.

### **NYC Transit Rules and Regulations**

NYCT Rules and Regulations say all employees must swipe their identification passes when entering NYCT property. Rule 27(e) states: "Upon entering system property for any purpose, employees shall swipe their identification passes or, where swipe head is not available, produce such passes for examination by employees in charge."

OIG investigators reviewed Fucci's Metrocard usage for the six-month period prior to January 25, 2013 and found zero swipes. In addition, OIG investigators personally observed that Fucci did not swipe on January 30, 2013 and February 5, 2013 and further observed on the video surveillance tapes that Fucci did not swipe on those two dates plus the four other dates discussed above. Fucci acknowledged to OIG that he never swiped and that he was unaware of the rule requiring that he do so. Fucci's supervisor, John Brown, admitted that he never enforced the rule among his subordinates.

It is noteworthy to mention that even though Fucci was made aware of Rule 27(e) at his April 15, 2013 OIG interview and Brown was put on notice that his subordinate was not in compliance, Fucci has only swiped in 10 times since that date (as of September 25, 2013).

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<sup>10</sup> Supervisor Brown confirmed that maintainers are permitted to work without supervision and that Fucci needed to visit other locations as part of his duties.

### FINDINGS

1. Fucci failed to work a total of 8 hours 2 minutes without taking appropriate leave and filed false time sheets on the following dates:
  - December 5, 2012 – 2 hours 49 minutes
  - December 6, 2012 – 43 minutes
  - January 18, 2013 – 54 minutes
  - January 30, 2013 – 41 minutes
  - February 5, 2013 – 1 hour 55 minutes
  - February 6, 2013 – 2 hours
2. Fucci never swiped in or out at the Broadway Junction subway stop in violation of Rules and clearly visible signage.
3. Superintendent John Brown, did not verify Fucci's time and did not enforce Rule 27(e).

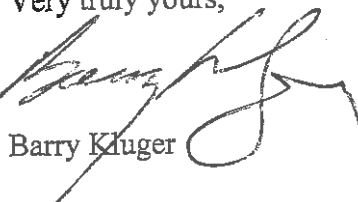
### RECOMMENDATIONS

1. Discipline Fucci for failure to work his required hours, submit accurate time sheets and to swipe in as required.
2. Enforce Rule 27(e) and require employees to swipe in when entering a subway station and when proceeding through a fare-control area at any point during their shifts.
3. Require supervisors to verify time sheets before approval.
4. Take appropriate action regarding Brown for failure to verify Fucci's time and enforce 27(3)e.
5. Retrain all employees regarding the requirement to swipe into the system.

Please advise me ~~within~~ thirty (30) days of your receipt of this letter of any actions you take with regard to the foregoing. If you have any questions or need additional information, please let me know.

Thank you for your assistance in this matter.

Very truly yours,



Barry Kluger

Cc: Mark Neadel