



LONG ISLAND RAIL ROAD DISCIPLINE FOLLOW-UP

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OVERVIEW

The Transportation Department of MTA Long Island Rail Road (LIRR) is responsible for the daily movement of trains to serve passengers on one of the busiest commuter rail line in the United States. As of year-end 2013, the Transportation Department employed almost 1,800 individuals including engineers, conductors, and assistant conductors. To prevent operational disruptions, Transportation employees must follow established operating rules and avoid unnecessary absences. In turn, the Department must have an effective system for administering discipline when infractions do occur.

In 2005, the Office of the MTA Inspector General (OIG) released two comprehensive audit reports on the LIRR disciplinary system. Our first report, *Long Island Rail Road's Transportation Department Has Failed to Implement an Effective Discipline System* (OIG #2005-25L) found a substantial breakdown at all stages of the disciplinary process, beginning with the pursuit of appropriate discipline for employees who violated rules, to assessing and enforcing suspensions. Similarly, we noted numerous failures to apply authorized, enhanced penalties in the case of repeat violations. In our follow up report, entitled *Human Resources' Involvement with Long Island Rail Road's Discipline Process* (OIG Report #2005-26L), we found that disciplinary records maintained by the LIRR Human Resources Department were not consistently accurate or kept up to date. In both reports we made specific recommendations for improvement.

In 2014, OIG revisited the LIRR disciplinary process to determine the extent, if any, to which the agency had made improvements. Our findings are very positive. Regarding Human Resources, we found that the records it maintains are now current and accurate. As for Transportation, we found that it has made great strides overall in enhancing its disciplinary process but needs to do a better job documenting the actions it takes and its reasons for taking them.

Summary of Findings

Improvements are evident in the way Transportation pursues discipline for both attendance-related and operational violations. Information is now more accurate and complete, allowing for charges to be brought in a timely manner. Suspensions are imposed consistently for repeated violations and those suspensions are served. One particularly significant reason that the process is now more effective and efficient is that LIRR has created a central office to administer the disciplinary process for Transportation, independent of the department's management structure.

Our analysis showed markedly improved consistency and compliance with disciplinary policy since the establishment of this office.

In short, we found an essentially satisfactory disciplinary system in which Transportation management uses an appropriate blend of personal judgment and adherence to policy to assess and administer discipline in a fair and consistent manner. Managers now have detailed knowledge of operations and the personnel involved, as well as the experience necessary to proceed in a way designed to curb undesirable behavior while improving the job performance of employees, many of whom have undergone months of intensive training. To balance these interests and tailor the discipline appropriately, the process provides managers with a reasonable degree of discretion and flexibility. Importantly, though, allowing such discretion increases the need for decision-makers to document their actions and accept responsibility for them.

In that regard, we observed that Transportation managers were not reliably documenting their disciplinary decisions. Specifically, we found that managers did not consistently:

- Update records when disciplinary charges were modified
- Provide written justifications for making exceptions to disciplinary policy or when issuing verbal warnings

Summary of Recommendations

To increase accountability and transparency, while enhancing the fairness and consistency of the disciplinary process, OIG recommends that Transportation enforce its existing policy requiring decision-makers to (1) update disciplinary records to ensure that they are current, accurate, and complete and (2) document in writing their involvement in the process and the rationale for their decisions.

LIRR accepted our recommendations, stating in its written response that “LIRR shares your interest in ensuring accountability by ensuring records and written justifications are properly maintained and your audit will assist us in that effort.” The response also noted that LIRR has already implemented the second of these recommendations and expects to implement the other during the First Quarter of 2015.

BACKGROUND

The LIRR disciplinary process is governed by various rules, including the agency's Labor Relations Department corporate-wide policy, the Transportation Department (Transportation or Department) Trial Office's own *Trial Office Manual*, collective bargaining agreements, and Federal Railroad Administration regulations.

Basically, disciplinary violations are divided into two main categories: absence-related and operational. Absence-related violations include excessive and unauthorized absences as well as late arrivals. In December 2006, LIRR implemented its current agency-wide *Absence Control Policy* that defines specific penalties for violations that are divided into three categories:

- 1) *AWOLs*. An AWOL (absent without leave) occurs when an employee neither calls Crew Management (an office within the Transportation Department) nor arrives at the work site for his or her scheduled shift (a "no-call / no-show"). This is the most serious type of absence-related violation and carries an automatic suspension.
- 2) *Run Failures*. A Run Failure occurs when an employee is expected at work but calls Crew Management within a prescribed time period (e.g., 30 minutes before start time, one hour after start time, etc.) to report that he or she will be absent. The call-in deadlines separating Run Failures from AWOLs vary by craft.
- 3) *Points-Related Violations*. Absences other than AWOLs and Run Failures carry associated points that add up and may result in discipline. Thus, when an employee accumulates a certain number of points within a given time period (e.g., 12 [or more] points within one month, 24 points within six months), the LIRR Human Resources Department (HR) computer system automatically generates a violation. A common example is leaving early *with* approval (which carries four points).

In August 2012, Labor Relations issued a guide entitled *The Disciplinary Process at the LIRR*, that broadly discussed (but did not comprehensively define) a wide range of operational-type violations covering several crafts and their unions. While these guidelines defined some violations, in our report we use the term "operational violations" to include the following:

- Serious misconduct that may result in a suspension, demotion, or dismissal upon the first offense, such as a physical assault, injuring or endangering the safety of another person, violation of drug and alcohol policy, or theft of services or property.
- Operational infractions, meaning violations of general operating rules specific to Transportation.
- Infractions related to a failure to properly collect or submit ticket revenue.
- Violations of administrative rules (e.g. a conductor's failure to wear the proper hat).

LIRR Disciplinary Organizational Structure

Prior to 2013, LIRR disciplinary proceedings were conducted by a trial office within each major operating department, with no centralized oversight to ensure the fair and consistent application of rules and practices throughout the agency. Currently, there is still a separate trial office for Transportation and for each of the other two main operating departments (Maintenance of Equipment, and Engineering),¹ but each now reports to Labor Relations, a structure that should promote fairness and consistency. Generally, the Transportation Trial Office and Transportation Department managers work together closely in administering discipline for alleged absence and operational infractions.

Transportation Department Disciplinary Process

The Transportation disciplinary process begins when the Trial Office receives notice that an employee committed a violation. This information can come from several different sources. The Trial Office receives notice for most absence-related violations via HR's monthly Absence Control Report. Notifications for most operational and some absence-related violations come from the daily Situational Awareness for Efficient Railroading (SAFER) report.² Other forms of notification include customer complaints and internal fare collection audits.

Preliminary charges should be drafted as soon after notice as practicable. The Trial Office then conducts a fact-finding inquiry into the alleged violation. In consultation with management, the Trial Office draws up formal trial charges as appropriate; management may also decide to add, reduce or withdraw a trial charge if additional evidence is developed. On rare occasions, the Trial Office (now reporting to Labor Relations) and Transportation Department managers disagree on trial charges. The Trial Office may escalate the matter for resolution at a higher level within the two departments, but ultimately Transportation has the final authority.

The vast majority of charges are settled at the pre-trial stage, when the employee signs a "trial waiver." In essence, the employee admits to the conduct and receives a reduced penalty in exchange for waiving his or her right to a trial.

Absence Control Policy outlines progressive penalties for charges that are resolved by trial or admission.³ In contrast, *operational* policy does not provide specific penalties in most cases for

¹ Other LIRR departments have fewer employees than Transportation, Maintenance of Equipment and Engineering. Administration of the disciplinary process for these smaller entities is divided among these three trial offices.

² A document used by Transportation to report non-compliance with policy, except attendance policy that is captured by another report. The Trial Office uses the SAFER report to obtain information for its Transportation Trial Database.

³ In this context the term "progressive" means increasing severity for repeat offenders. For example, a first AWOL carries a five-day suspension following an admission and 10-day suspension following a trial; a second offense carries 10-day and 20-day suspensions respectively.

discipline resulting from admission or trial.⁴ However, operational guidelines do emphasize that disciplinary policy is designed to be progressive with increasing penalties for repeated violations.

⁴ LIRR operational policy has standards for violations that may warrant dismissal, such as the serious misconduct described previously, but these are a small minority of all operational violations.

SIGNIFICANT IMPROVEMENT IN THE TRANSPORTATION DEPARTMENT DISCIPLINARY PROCESS

In our current review, we sought to determine whether the Transportation Department had improved its disciplinary process since our 2005 report, entitled *Long Island Rail Road's Transportation Department Has Failed to Implement an Effective Discipline System* (OIG #2005-25L), particularly by increasing its managerial oversight and enforcing compliance with disciplinary policy as we had recommended. To make this current determination, we performed an in-depth analysis of Transportation Trial Office absence control and operational violation records, Transportation Department reports, HR Absence Control Reports, payroll data, and various disciplinary documents for individual employees. Additionally, we spoke with managers and other staff members in HR, Transportation's operational units, and Crew Management, as well as those in the Transportation Trial Office. Our analysis and interviews focused on violations that occurred after the current Transportation trial officers became a part of the disciplinary system in July 2012. The areas where we found significant improvement are presented below.

Transportation Management Initiates Charges in Accordance with Policy

In 2005, OIG found that Transportation Department managers could not explain why they had not initiated charges for three out of 36 (8.3 percent) employees sampled who committed Run Failures or were AWOL. By contrast, in 2014 we found that Transportation initiated charges for Run Failure and AWOL violations in virtually every instance (416 out of 420) consistent with Absence Control Policy.⁵ This high level of documented compliance is a marked improvement in Transportation's disciplinary practices.

Transportation Consistently Applies Progressive Discipline for All Violations

A progressive disciplinary program applies more-severe sanctions for repeated violations within a prescribed timeframe. Consequently, a second infraction occurring within a set time period would incur a harsher penalty than the first infraction. This approach has the benefit of extending forbearance to the first-time offender while discouraging recidivism.

In 2005, OIG found that not only did the Transportation Department fail to abide by the precursor to the LIRR 2006 agency-wide Absence Control Policy; the Department did not consistently follow even its own internal unwritten standards. OIG also found that when imposing discipline for absence-related infractions, Transportation disregarded previous violations older than just one year – contrary to the three years required by the Absence Control Policy and collective bargaining agreements.⁶

⁵ All four exceptions preceded the oversight-centralization of the Trial Office. Since then, the Trial Office has initiated charges for all Run Failure and AWOL charges in accordance with policy.

⁶ Operational and absence-related violations permanently remain on an employee's disciplinary history. However, LIRR Absence Control Policy dictates how long a violation may be used in assessing progressive discipline for a (Footnote continued on next page)

In 2014, we found that the Transportation Department was fully abiding by the terms of applicable disciplinary policy, consistently imposing progressive discipline as appropriate and properly factoring in points for absence control violations from the previous three years. Transportation's improvement was dramatic: After progressively disciplining less than 25 percent of absence-related cases in 2005, in 2014 it handled 100 percent of these cases in a manner consistent with applicable policies.

HR Provides Transportation with Reliable and Accurate Absence Control Data

The Transportation Department uses data provided by HR to bring charges against employees for absence-related violations. In 2005, OIG found that HR Absence Control Reports were often inaccurate and required significant additional work to verify information. In 2012, LIRR implemented a new centralized Corporate Time and Attendance Management System (CTAMS) for all departments. CTAMS uses timekeeping data to automatically generate the Absence Control Report. We found that this system greatly increases the accuracy and ease with which absence control violations are captured and improves the way in which the various departments are alerted to such violations.

Transportation Has Greatly Improved its Process of Assessing Suspensions

In 2005, OIG discovered significant weaknesses in the Transportation Department's procedures for assessing suspensions, including that suspension days were frequently reduced or commuted, not served at all, or not assessed in the first place. In a few cases, employees were even retroactively paid for suspension days they had served. In 2014, we found that all Transportation suspensions were appropriately assessed and served, with pay withheld. The following illustrates the current heightened level of compliance:

Transportation no Longer Commutes Suspensions for Absence-Related Violations

In 2005, OIG found that 85 percent of Transportation employees assessed with a suspension for excessive or unauthorized absences as well as late arrivals had their suspension commuted to a shorter period than that allowed by Absence Control Policy. By contrast, in 2014 we found that the Transportation Department no longer commutes suspensions for these violations.

Transportation Employees Now Serve their Entire Suspensions

In 2005, OIG reviewed 10 Transportation Department employees and found that 12 of the 22 suspensions assessed (55 percent) were not served in accordance with the terms of the signed trial waiver. In 2014, we analyzed 72 Transportation Department employees who were suspended in 2013 or early 2014, and found that all 72 properly served their entire suspension.

subsequent violation. Points-related absence violations, for example, are no longer considered for disciplinary purposes after three years.

We also found that the Transportation Trial Office has significantly improved its method for assigning suspension dates to avoid compromising departmental efficiency. To begin, Crew Management and the Transportation Trial Office now use CTAMS to coordinate manpower coverage. Managers then select suitable suspension dates based on operational needs, without undue influence from the unions or employees. This new process satisfies the 2005 recommendations and is consistent with the processes used by the trial offices for both the Engineering and Maintenance of Equipment departments.

Transportation Appropriately Assesses Suspensions for All AWOL Violations

In 2005, OIG found that even though suspensions are required for all AWOL violations, the Transportation Department did not impose any suspension days for 18 out of the 59 AWOLs (30.5 percent) that were analyzed. In 2014, we found that all of the approximately 60 AWOLs that we examined appropriately resulted in suspension of the offender.

Transportation Employees Are Not Retroactively Paid for Suspension Days

In 2005, OIG identified two instances where an employee was paid retroactively for the period during which the employee was out on suspension. However, our present review of 72 Transportation employee suspensions and payroll records found no evidence that Transportation had awarded retroactive pay for a suspension date.

Transportation has Established Rules Requiring Documentation for Exceptions to Operational and Points-Related Absence Control Policy

In 2005, no one within Transportation (including the staff of the then-internal Transportation Trial Office) was documenting the name of decision-makers and their rationale for assessing particular penalties, even where they were imposing discipline in what appeared to be an illogical manner. As a result of these findings, OIG issued a recommendation accepted by management that written policy should contain a “requirement that any discipline that deviates from these guidelines must be documented in writing and approved by authorized personnel.” OIG also recommended “procedures that provide for capturing the names of decision-makers in disciplinary actions.”⁷

The operational guidelines of the Labor Relations Department now clearly provide exceptions to the policy of progressive discipline, but these exceptions must be documented and agreed upon by senior management and the Trial Office. The agency-wide Absence Control Policy also requires that exceptions to points-related violations be addressed with written explanations. However, that policy is silent on the issue of Run Failures and AWOLs, which are considered more serious infractions.

⁷ Long Island Rail Road’s Transportation Department Has Failed to Implement an Effective Discipline System (MTA/OIG #2005-25L), October 2005, pg. 31.

Despite updated guidelines for both operational and absence-related policies, Transportation does not always document the names of decision-makers and their rationale behind certain exceptions to policy. As discussed in the following section of this report, it is essential that Transportation consistently provide this documentation and update its records.

AREAS FOR IMPROVEMENT IN THE TRANSPORTATION DEPARTMENT DISCIPLINARY PROCESS

While we found significant improvement within Transportation's disciplinary system, some inconsistencies persist in the area of accountability. As previously mentioned, Labor Relations guidelines now require that exceptions to operational policy be documented and explained in writing. Despite these improved standards, in 2014 we found that some Transportation managers are still not consistently recording the names of decision-makers, updating records, providing justifications for authorizing penalties that appear not to comply with absence-control or operational policy, and documenting in writing their verbal disposition (by instruction) of minor offenses. For its part, Transportation management agreed that there is room for improvement.

Decision-Makers Should be Identified in Connection with Disciplinary Actions

Labor Relations Guidelines state that:

...in unusual or severe circumstances, the Carrier [LIRR] may choose to not impose "progressive discipline." In such situations, the manager making the disciplinary decision should document the reasons for his/her non-progressive actions and obtain written approval from senior management in the department and concurrence from the Labor Relations Department.⁸

Further, Absence Control Policy allows for managerial discretion in assessing discipline, including suspensions, for points-related violations, as long as "written explanation [is] provided."⁹ Indeed, the exercise of such discretion in certain circumstances is necessary to achieve a fair disposition. For example, management may reduce a trial charge when a violation is found to be less serious than originally believed. A manager may also use his or her discretion to assess a lower suspension than required by policy based on individual mitigating circumstances concerning a violator or the violation. And for a minor infraction, management can immediately give verbal instruction or a warning to an employee and appropriately avoid the time and trouble of a trial. Under policy, all of these actions are acceptable—provided that the decision-makers document their actions in writing, include appropriate rationales for the particular discipline imposed, and further include the name of the decision-maker so that he or she is accountable.¹⁰

We found that the Department's complex managerial structure made it difficult for the Trial Office and even for Transportation managers to readily determine who had made decisions in some disciplinary cases. For some employee titles, the responsibility for discipline rested with

⁸ Long Island Rail Road Labor Relations Department: *The Disciplinary Process at the LIRR*, August 2012, pg. 20.

⁹ Long Island Rail Road Corporate Policy and Procedure: *Absence Control Policy*, December 2006, pg. 7.

¹⁰ See also Decision-Makers Should Consistently Justify Exceptions to Policy, at p. 12 below.

more than one manager. Additionally, we observed that personnel changes were quite common within Transportation: Managers received promotions, moved laterally, or retired, causing reporting relationships to change and institutional knowledge to diminish. In such a dynamic environment, the need to document significant decisions is crucial.

Transportation Should Consistently Update its Records

Absence-Related Trial Charges

We found four AWOL violations in 2013 and early 2014 that a senior Transportation manager withdrew or reduced to a Run Failure without any written justification in the SAFER report or in the Transportation Trial Database.¹¹ At the time of these dispositions, Transportation trial officers asked Transportation managers to provide a rationale for each withdrawal/reduction, but received none. Recently, at our request, Transportation Department managers researched the four cases and discovered legitimate reasons for the withdrawal/ reduction of three of the four AWOLs. Two of the four were actually Run Failures; as to the third, the union successfully argued that the employee had been on (not away from) LIRR premises. However Transportation management could not find any justification for the withdrawal of the fourth AWOL charge. This case also did not appear in the SAFER report as an instance of non-compliance with operational policy.

While these four cases represent a very small fraction of all the absence-related disciplinary actions taken, they illustrate a globally-significant need: Transportation managers should document the basis for their decisions in writing to the Trial Office, and the Trial Office should then update the Transportation Trial Database, creating a permanent record for others who might later question the modification.

Operational Trial Charges

Besides Transportation's occasional failure to formally record adjustments to absence-related trial charges, we found an instance where the Transportation Trial Database failed to properly document the handling of what appeared to be a significant *operational* charge and the eventual disposition.

Specifically, a conductor received a 270-day suspension for violating drug and alcohol policy in March 2012 and signed an agreement under which he would be subject to dismissal if found guilty of any subsequent disciplinary offense. In June 2013, according to the Transportation Trial Database, the conductor apparently committed a revenue-related violation for failing to collect fares in four train cars without justification. In fact, though, he was never actually charged with any violation. Indeed, additional research proved that the conductor had been

¹¹ The Transportation Trial Database is the computer system in which the Transportation Trial Office records absence-related and operational violations using the Absence Control Report and SAFER report respectively as sources

physically unable to collect the fares because of crowded conditions. Nonetheless, the SAFER report was never updated to reflect this information.

Decision-Makers Should Consistently Justify Exceptions to Policy

In 2014, we found 46 violations in which an employee who committed two or more similar infractions within a prescribed timeframe was disciplined in a way that seemed contrary to policy.¹² To illustrate, a conductor received a Letter of Caution (L.O.C.) for two similar consecutive operational violations when, according to operational policy, he should have received a L.O.C. for the first violation and a Letter of Reprimand for the second.¹³ Consequently, we consulted the Transportation Trial Database to see whether each apparent exception included an explanation. It did not. Indeed, the database contained an explanation for only 13 of the 46 dispositions (28.3 percent).

Transportation managers agreed with our assessment that the discipline assessed for these 46 violations appeared to be inconsistent with applicable operational or absence control policy. At our request, they provided justification for the 33 undocumented violations. Significantly, though, the managers did not accomplish this by reference to primary records created at the time of the violations. Rather, they relied on their memories of the actions they and others had taken in the cases, sometimes several years earlier.

Obviously human memories, which are naturally imperfect and fade over time, are wholly inadequate substitutes for complete and accurate written records prepared by decision-makers contemporaneously with their actions.

Transportation Should Consistently Document its Handling of Minor Infractions

Transportation managers use the term “minor” to describe behavior that they subjectively determine to be slight or inconsequential. Neither LIRR nor Transportation policy formally defines the term. Examples of behavior that Transportation managers have deemed minor include failure to wear the proper hat and mistakenly accepting a wrong one-way train ticket. When an employee commits a minor infraction, a field supervisor or manager has the discretion to immediately address that employee’s behavior through reinstruction or retraining (by discussing it with the employee). This event is called a “failed/discussed.” No trial charge is filed, but agency policy and Department rules require that the supervisor document the incident and explain the basis for the action taken, which must then be approved by a superintendent.

In 2014, we examined 24 operational violations that were disposed of with a failed/discussed designation, but we found a rationale sufficient to support that designation in just ten of the 24

¹² Each employee committed at least one violation after the current Trial Office structure was established.

¹³ A Letter of Caution is a warning letter sent to Transportation Department employees when they first commit an absence-related or operational violation. Although it is not an official form of discipline, an L.O.C. serves as documentation that an infraction has occurred. A Letter of Reprimand is an official form of discipline.

cases (41.7 percent). We also found that the Transportation Trial Database did not contain the name of the superintendent who signed off on the failed/discussed in 19 out of the 24 instances (79.2 percent). Documentation that describes the incident, explains the basis for the verbal instruction, and contains the name of the decision-maker(s) involved provides a critically important internal control and its absence makes it impossible for Transportation management to know whether verbal instruction is being used appropriately and to hold the decision-maker accountable.

RECOMMENDATIONS

1. Appropriate documentation enhances the Transportation Department's ability to assure managerial accountability and to provide transparency in its disciplinary process. To help strengthen the disciplinary process, Transportation management should:
 - a. Update SAFER reports to reflect modifications to future absence-control and operational trial charges, and send each revised SAFER report to Trial Office staff so that they can update the Transportation Trial Database.

Agency Response:

LIRR accepted our recommendation and expects to implement it within the First Quarter 2015, agreeing that Transportation management should document and communicate final outcomes for all violations.

LIRR officials clarified that their current practice for documenting final violations is for "an email to be forwarded to the Trial Office when a violation recorded in SAFER is withdrawn or reduced. . . Upon receiving the email, the Trial Office will reflect the change in its database. Thus, the SAFER and the email provide the paper trail in support of violations ultimately recorded."

LIRR acknowledged that this process was not followed in the instances cited in our audit. OIG agrees that this practice—if followed consistently across departments—is an acceptable method for ensuring that the documentation is complete and readily available

- b. Strengthen and/or enforce existing requirements for consistent written documentation providing justifications for authorizing penalties that appear not to comply with absence-control or operational policy, and documenting the handling of minor offenses that are disposed of verbally. This documentation should also include the name of the decision-maker for each particular action.

Agency Response:

LIRR accepted our recommendation, stating that "Transportation Management will strengthen its current process ensuring that justification for all discipline contrary to corporate policy and all infractions deemed as 'minor', including the decision-maker for each action, is properly documented and communicated [to] the Trial Office to incorporate into its database." The agency expects to implement the recommendation within the First Quarter 2015.

2. To further ensure fairness and consistency, on the rare occasions of disagreement, Transportation and Labor Relations should refer any disputed issue(s) to senior management for final resolution.

Agency Response:

LIRR accepted and implemented our recommendation, reporting that for disciplinary cases in which termination is a possible outcome, any dispute between the Transportation Department and the Trial Office regarding acceptable discipline is referred to both departments' heads. Disagreements between those individuals are referred to the Senior Vice President of Operations, whose decision is final.