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Inspector General

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Darryl Irick
Senior Vice President
MTA New York City Transit
Department of Buses
2 Broadway, 30th Floor
New York, NY 10004

**Re: Abuse of Union Release Time
by Bus Operator
MTA/OIG #2017-01**

Dear Mr. Irick:

The Office of the MTA Inspector General (OIG) has completed its investigation into an allegation that New York City Transit (NYC Transit) Department of Buses, Bus Operator George Botts (Botts), who is also Vice President of Amalgamated Transit Union, Local 726, AFL-CIO (Local 726), engaged in misconduct involving abuse of union release time. Our investigation substantiated the allegation. We recommend NYC Transit Department of Buses impose discipline on Botts, as it deems appropriate, up to and including termination. We also recommend NYC Transit Department of Buses continue to review its internal controls and promulgate additional policies and procedures to ensure the integrity and accuracy of Release Sheets and union release time. We note that as a result of our investigation some additional internal controls have already been implemented to address accounting for union release time.

INVESTIGATION

Botts was hired as a Bus Operator on December 14, 1987. In December 2011, he became Vice President of Local 726. In that capacity, Botts is entitled to full union release time, which allows Botts to pick a bus run and receive the corresponding run pay without driving the run. However, Botts is required to perform union duties for the equivalent of the paid work hours of the run. OIG investigators analyzed Botts's time records and determined that for the period March 1, 2016 through May 20, 2016, Botts's selected route shift was Run Yukon 714/X22. Pursuant to a labor contract, Botts was paid for 12 hours and 59 minutes even though the actual time of the run was only 11 hours and 24 minutes from March 1, 2016 through April 4, 2016, and 11 hours 15 minutes from April 5, 2016 through May 20, 2016.

As the Vice President of Local 726, Botts was actually on paid union release time and was not required to drive the selected route pursuant to the Memorandum of Understanding between the New York City Transit Authority and Local 726 effective February 2, 2000 (2000 MOU), which is the Collective Bargaining Agreement between NYC Transit and Local 726 (CBA).¹ Therefore, Botts was permitted to conduct Local 726 business at the depot to which he was assigned (Yukon Depot) or, with the proper notification, at the other depots on Staten Island including, Castleton, Charleston and Meredith.

OIG staff learned that Botts was required to be present in one of the designated depots during the time of his selected route shift while on union release time. Botts was also required to sign in and out on a Union Release Sheet (Release Sheet) which was maintained using military time. Of the 52 entries Botts made on the Release Sheet in the period examined by the OIG (March 1, 2016 through May 20, 2016), Botts signed in at 0700 and out at 1830 (11 hours and 30 minutes) on 45 occasions.

For the remaining seven occasions the Release Sheets reflect the following: on one occasion Botts signed in at 0800 and out at 1930 (11 hours and 30 minutes); on a second occasion Botts signed in at 0630 and out at 1800 (11 hours and 30 minutes); on a third occasion Botts signed in at 0730 and out at 1900 (11 hours and 30 minutes); on a fourth occasion Botts signed in at 0650 and out at 1830 (11 hours and 40 minutes); on a fifth occasion Botts signed in at 0800 and out at 1830 (10 hours and 30 minutes); on a sixth occasion Botts had an approved Saturday change of work day for 12 hours; and on the seventh and final occasion Botts took 8 hours and 12 minutes of vacation and was paid for 4 hours and 47 minutes.

Pursuant to a second MOU effective December 16, 2002 through December 15, 2005 (2002 MOU), Botts continued to be paid for his selected shift a total of 12 hours and 59 minutes per day, five days per week and, consistent with the 2000 and 2002 MOUs, Botts was expected to be present at either Yukon Depot or another Staten Island depot.

Botts previously lived on Staten Island, but in the summer of 2015 moved to Pennsylvania and commuted to and from work in his personal vehicle and used a personal EZ Pass device to pay for tolls. As a result of that commute, Botts incurred an inbound toll at the Outer Bridge Crossing (OBX) and an outbound toll on the Delaware River Joint Toll Bridge Commission (DRJTBC). Using various sources, OIG investigators determined that the travel time by automobile from the OBX toll to the Yukon Depot was approximately 10 minutes; and the travel time by automobile from the Yukon Depot to the DRJTBC toll was approximately 62 minutes.

¹ The terms MOU and CBA are used interchangeably.

OIG investigators analyzed Botts's EZ Pass records which revealed that on numerous occasions between March 1, 2016 and May 20, 2016, Botts signed in and out for his shifts at times when EZ Pass records established that he was not at a depot, but rather had already traveled across an EZ pass location. The discrepancies totaled 66 hours and 36 minutes based on the comparison analysis of the EZ pass records and the times of Botts's selected run (i.e. 11 hours and 24 minutes from March 1, 2016 through April 4, 2016, and 11 hours and 15 minutes from April 5, 2016 through May 20, 2016).²

We found that approximately one-third of the time discrepancies occurred in the morning prior to Botts reporting for his shift, and two-thirds occurred in the evening when Botts purportedly completed his shift. Examples of Botts's abuse of time include the following:

- On March 14, 2016, Botts signed in for work at 7:00 a.m. however, his EZ Pass was charged at the OBX at 7:17 a.m. This means that he would have arrived at the Yukon Depot at approximately 7:27 a.m. (a 27 minute discrepancy). On that same day Botts signed out at 18:30; however, his EZ Pass was charged at DRJTBC at 16:02 which means he would have left the Yukon Depot at approximately 15:00 (a 3 hour and 30 minute discrepancy). The total time discrepancy for the day was 3 hours and 57 minutes based on the times Botts entered on the Release Sheets and the times documented by EZ Pass records. The pick time of 11 hours and 24 minutes in effect that day would result in a deduction of 6 minutes from Botts's time submissions, which would equate to a total of 3 hours and 51 minutes of time abuse.
- On March 22, 2016, Botts signed in for work at 7:00 a.m. however, his EZ Pass was charged at the OBX at 7:36 a.m. This means that he would have arrived at the Yukon Depot at approximately 7:46 AM (a 46 minutes discrepancy). On that same day Botts signed out at 18:30; however, his EZ Pass was charged at DRJTBC at 17:02 which means he would have left the Yukon Depot at approximately 16:00 (a 2 hour and 30 minute discrepancy). The total discrepancy for the day was 3 hours and 16 minutes based on the times Botts entered on the Release Sheets and times documented by EZ Pass records. The pick time of 11 hours and 24 minutes in effect that day would result in a deduction of 6 minutes from Botts's time submissions, which would equate to a total of 3 hours and 10 minutes of time abuse.
- On May 20, 2016, Botts signed in for work at 7:00 a.m.; however, his EZ Pass was charged at the OBX at 7:10 a.m. This means that he would have arrived at the Yukon Depot at approximately 7:20 a.m. (a 20 minute discrepancy). On that same day Botts

² OIG staff determined that the Charleston Depot is the only depot that is closer to the Outer Bridge Crossing than the Yukon Depot. The travel time from the Outer Bridge Crossing to the Charleston Depot is approximately 7 minutes a difference of three minutes; therefore, even if Botts occasionally reported to other depots, the total time discrepancy is approximately the same.

signed out at 18:30; however, his EZ Pass was charged at DRJTBC at 17:04 which means he would have left the Yukon Depot at approximately 16:02 (a 2 hour and 28 minute discrepancy). The total discrepancy for the day was 2 hours and 48 minutes based on the times Botts entered on the Release Sheets and times documented by EZ Pass records. The pick time of 11 hours and 15 minutes in effect that day would result in a deduction of 15 minutes from Botts's time submissions, which would equate to a total of 2 hours and 33 minutes of time abuse.

POLICIES AND AGREEMENTS

2002 Memorandum of Understanding

The 2002 MOU specifies that, "Transportation full time release employees will be permitted to pick a run and will receive the corresponding run pay. Such employees will be required to perform paid release time duties as set forth in the contract for the equivalent of the paid work hours of the run, including, vehicle time, report time, clear time and paid swing time. Such employees will be paid a minimum of eight hours and will be required to work a minimum of eight (8) hours subject to the provisions for paid leave applicable to hourly employees generally."³

New York City Transit, Department of Buses, Directive Order No. 02.02.01 (December 19, 1995 Directive), regarding Timekeeping Procedures for Employees on Paid Release Time, states in part:

1. Employees must, individually, sign in and out on a daily basis attendance sheet at their assigned locations unless they have been instructed to report at a different location on a particular day, e.g., to act as a union representative at a scheduled hearing. In such cases, they must call in and out to their reporting locations.
2. Employees must keep a daily log describing their work activities, which must be submitted to management weekly. (Copy attached)
3. Employees who use release time for activities to which they are not assigned, or for which they are not allowed release time in accordance with the applicable collective bargaining agreements, are not to be paid for time spent on such activities (Section 1.16 of the TWU agreement). It should be noted that they are not paid for attending union meetings. (emphasis in original)

³ Michael Valloney, NYC Transit Staten Island Director of Labor Relations, has advised the provisions in the 2002 MOU regarding union release time are still in effect.

New York City Transit Directives

New York City Transit, Department of Buses, Directive Order No. 02.50.00 (May 28, 1997 Directive) regarding Paid Release Time for Employees, states in part:

1. Employees **must sign** in and out on a daily attendance sheet unless otherwise instructed to do so. Employees instructed to report to a different location at their assigned locations unless they have been instructed to report at a different location **must call** in and out to their reporting location. (emphasis in original)
2. Employees must record a daily log detailing their work activities and submit the completed log weekly to management.
3. Employees performing unassigned duties while on release time or which are not covered by the applicable collective bargaining agreements are not to be paid for time misspent. Furthermore, are **not** to be paid for attending union meetings.” (emphasis in original)

An Updated Directive, Directive Order No. 02.50.01 (March 23, 2016 Directive), regarding Paid Release Time for Employees, states in part:

Employees on NYC Transit and MTA Bus paid release time are reminded that they are accountable to the Authority for the duties that they are authorized to perform and for their attendance whenever they are released.

Managers and supervisors are instructed to implement the following procedures for all employees on paid release time:

- Each employee **must sign** in and out on a daily attendance sheet unless otherwise instructed to do so. Employees instructed to report to a different location **must call in and out** to their reporting location. (emphasis in original)
- Employees must record a daily log detailing their work activities and submit the log to management on a weekly basis
- Employees performing unassigned duties while on release time or which are not covered by the applicable collective bargaining agreements are not to be paid. Furthermore, employees are **not** to be paid for attending union meetings (emphasis in original)

New York City Transit Rules & Regulations (Revised January 2016)

NYC Transit Rules and Regulations (Rev. Jan. 2016) Chapter One, Rule 5(a) states, in part, "Employees must report for their assignments as directed. Absence from duty without proper authority is regarded as willful neglect of duty and as a serious breach of discipline."

Chapter One, Rule 6 (b) states, in part, that "All employees, unless otherwise directed, must report daily, on prescribed time records the amount of time on duty, the actual reporting time, the time relieved, the account, function or job number of each job and the time devoted thereto."

Based on these Directives and Rules, Botts was required to work at either Yukon Depot or another designated depot on union matters for the equivalent number of hours specifically, 11 hours and 24 minutes from March 1, 2016, through April 4, 2016 and 11 hours and 15 minutes from April 5, 2016 through May 20, 2016. Botts was also required to sign in and out on a daily attendance sheet at his any depot he reported to, and to keep a daily log detailing his work activities for submission to management on a weekly basis.

OIG staff confirmed with NYC Transit Department of Buses managers that the Directives were in effect at all times relevant to our investigation and Botts would have been made aware of them in the normal course of business via routine communications from the Department of Buses Information Center (DOIBC). Moreover, since Botts had previously used full union release time as the shop steward at the Castleton Depot for eight years from January 2003 until December 2011, he should have been fully aware of the requirements involving union release time.

When confronted with the December 19, 1995 and March 23, 2016 Directives, Botts claimed he was not aware of their content. Botts stated he had not submitted logs in the past, but has recently been told by management that he must maintain a daily log for weekly submission, report to the Yukon Bus Depot every day, and to sign the Release Sheet in the presence of management. When shown a copy of one of his own Release Sheets, Botts stated he was familiar with the language at the top and bottom of the form which states that labor/management activities were being performed and that the union person on paid union release time was to sign in upon arrival and sign out upon departure. When shown copies of his Release Sheets for the time period March 1, 2016 through May 20, 2016, Botts confirmed his signature on the sheets which contained the same language regarding performance of labor/management activities on union release time.

OIG staff has learned that changes have been made since we began our investigation to ensure the integrity of the Release Sheets. Specifically, Release Sheets are now maintained by the crew dispatcher inside a desk drawer in the crew office, whereas they previously were maintained outside of the dispatcher's sight. This ensures that dispatchers verify who is signing in and out at

any given time. In addition, if a union representative reports to a different location and calls in, the supervisors at each depot must speak with one another and document their communication.

FINDINGS

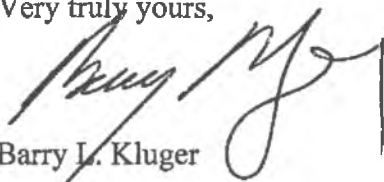
1. Botts engaged in abuse of time totaling approximately 66 hours and 36 minutes in that he arrived late and departed early from work on numerous occasions, in violation of NYC Transit Directives and NYC Transit Rule 5(a).
2. Botts made false entries on Release Sheets, in violation of the provisions of the Release Sheets itself and Rule 6(b).
3. Botts failed to maintain a daily log of his work activity, in violation of NYC Transit Directives and Rule 6(b).
4. NYC Transit Department of Buses lacked sufficient internal controls to ensure the accuracy of Release Sheets and use of union release time.

RECOMMENDATIONS

1. NYC Transit Department of Buses should impose discipline on Botts as it deems appropriate, up to and including termination.
2. NYC Transit Department of Buses should continue to review internal controls and promulgate additional policies and procedures to ensure the integrity and accuracy of Release Sheets and union release time.

Please provide me with the agency response to our recommendations within 30 days of receipt of this letter. As always, we appreciate your continued courtesy and cooperation. Should you have any questions, or need additional information, please contact me at (212) 878-0007 or Deputy Inspector General, Legal & Investigations Demetri M. Jones at (212) 878-0279.

Very truly yours,


Barry L. Kluger

cc: Stephen Vidal, NYC Transit