



Barry L. Kluger  
Inspector General

**Office of the Inspector General**  
Metropolitan Transportation Authority  
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November 28, 2017

Mr. Phil Eng  
Acting President  
MTA New York City Transit  
2 Broadway, 30<sup>th</sup> Floor  
New York, NY 10004

**Re: Time Abuse and Outside Activities  
by Assistant Chief Officer  
MTA/OIG #2017-10**

Dear Mr. Eng:

The Office of the MTA Inspector General (OIG) has completed its investigation into an allegation that Randall Richardson (Richardson), New York City Transit (NYC Transit) Assistant Chief Officer (ACO), Division of Station and Environment Operations (SEO), abused time, and submitted false time and attendance records. Our investigation substantiated this allegation. During our investigation we found that Richardson engaged in outside activity as a volunteer firefighter. We also found that NYC Transit policy does not specifically address volunteer outside activities, such as firefighting, that are not salary-based yet provide other pecuniary benefits. We recommend that NYC Transit impose discipline on Richardson as it deems appropriate, up to and including termination. We further recommend that NYC Transit review its dual employment and outside activity policies and implement policies and procedures to address outside activity involving volunteer services.

### INVESTIGATION

Richardson has been employed with NYC Transit since 1984. He became a supervisor in the Mobile Car Wash Unit (MCWU) in June 2003. The MCWU has approximately 240 employees and a fleet of approximately 84 mobile wash trucks that are used to clean subway stations throughout the city. Richardson was promoted to his current position of ACO in June 2012, and is assigned to the Quay Depot located at 90 Quay Street, Brooklyn, New York (Quay Depot). Richardson oversees managers who supervise the employees who clean the subway stations and operate MCWU equipment. Richardson is required to work eight hours a day, five days a week. Although he is not entitled to overtime, he can earn compensatory time for pre-approved extra hours of work. Richardson is assigned to the night shift, Monday through Friday. Richardson is also permitted to change his tours in order to attend meetings and other work-related events with notice to his supervisor John Gaito, Jr., Vice President and Chief Officer (VP & CO) of SEO. Most MCWU employees also work the night shift but, unlike Richardson, they report directly to various subway stations. Only drivers report to Quay Depot before heading out for their tours.

### *Outside Employment*

Since November 12, 2009, Richardson has also been a volunteer firefighter for the Jericho Fire Department (JFD) located in Nassau County, New York. Richardson is assigned to JFD Station 2, located at 680 Cantiague Rock Road, Jericho, New York. Although Richardson does not have specific duty hours for the fire department, he is required to respond to a certain percentage of alarms in order to remain in good standing and earn credits for responding to alarms. When responding to an alarm, Richardson must report to his duty location and submit a fingerprint scan to verify his presence.

According to its website, the Jericho Fire Department consists of 130 volunteer firefighters and responds to approximately 1,000 alarms a year. Under the Volunteer Firefighter's Benefit Law (VFBL), volunteer firefighters receive medical and loss of income benefits for line of duty injuries, sickness and death. Although they do not receive a salary, volunteer firefighters may receive additional benefits, including life insurance and small pension payments after retirement from the fire department, depending on the county and the fire department. In addition to statutory benefits under VFBL, JFD's volunteer firefighters receive life insurance and retirement benefits under Length of Service Awards Program (LOSAP). Under LOSAP, vested volunteer firefighters are eligible to receive \$20 a month for each year of credited service after reaching the entitlement age of 60 years. As of April 1, 2016, Richardson was vested with 6 years of service. Richardson also has a \$50,000 life insurance policy, which covers accidental death and dismemberment.

According to John Devine, Chief Support Office, Operations Support/Administration, Subways, his search of the Dual Employment Maintenance database and Richardson's employee file contained no dual employment authorization. However, according to Devine and Gaito, approval for dual employment or outside activity is *not* necessary for volunteer firefighters. Gaito stated that although Richardson's outside activity as a volunteer firefighter is well-known at the Quay Depot, Gaito had previously denied Richardson's request for approval to attend firefighting training during NYC Transit work hours in 2015.

### *Time and Attendance*

During an interview with OIG staff, Richardson stated that he does not sign in or use the Kronos identification card system, and admitted that he alone tracked his NYC Transit work hours. Richardson claimed that he tracked his hours by noting his arrival and departure times on his desk calendar and completed his bi-weekly timesheets based on his notations. Richardson acknowledged he sometimes forgot to make the notations and had to reconstruct his hours by searching through his electronic calendar for records of meetings. Gaito, who worked at MTA Headquarters located at 2 Broadway, confirmed that he did not monitor Richardson's arrival and departure times and stated he relied on the "honor system" when approving Richardson's timesheets.

As for his JFD volunteer work, Richardson stated that he is required to respond to approximately 23 percent of the alarms to remain in good standing. He claimed he never left work to respond to alarms because his office is too far from the fire station - approximately 40 minutes away without traffic. He also claimed he responded to alarms when he was at or near his home because he lives close to the fire station. He stated he responded to alarms on his way to work "a couple of times" because he was close enough to turn back. He added he receives alarm notifications on his cell phone.

OIG staff compared Richardson's NYC Transit Time and Attendance Reports with his fingerprint validated response times for the JFD for the period of January 1, 2015 through May 27, 2016. On eight separate dates, Richardson submitted time sheets that falsely claimed he was at work for NYC Transit when he was actually responding to alarms for the fire department. Richardson claimed on his time sheet that he worked from 10:00 p.m., on February 16, 2015 to 4:00 p.m. on February 17, 2015, for 18 hours in total. He requested and received eight hours of compensatory time (2 hours less than he claimed to have worked beyond his 8 hour tour). However, JFD records show that Richardson's fingerprint was scanned at the fire station on February 16, 2015, at 10:50 p.m. Based on the JFD records, it is clear that Richardson did not work 18 hours at Quay Street on February 16, 2016, as he claimed. Moreover, since there are no sign-in sheets or swipe records for Richardson, his actual arrival time at work cannot be determined.

On seven additional dates set forth below, Richardson submitted time sheets that falsely claimed he worked for NYC Transit when fingerprint records placed him at JFD.

1. On May 26, 2015, Richardson claimed to have worked from 10:00 p.m. to 6:00 a.m. the following day for NYC Transit, yet he reported to JFD at 10:10 p.m. on May 26
2. On August 26, 2015, Richardson claimed to have worked from 8:00 a.m. to 4:00 p.m. for NYC Transit, yet he reported to JFD at 10:31 a.m. on August 26, 2015.
3. On August 31, 2015, Richardson claimed to have worked from 8:00 p.m. to 10:00 a.m. the following day for NYC Transit, yet he reported to JFD at 9:38 p.m. on August 31.
4. On September 11, 2015, Richardson claimed to have worked from 10:00 p.m. to 9:00 a.m. the following day for NYC Transit, yet he reported to JFD at 10:12 p.m. on September 11.
5. On September 30, 2015, Richardson claimed to have worked from 10:00 p.m. to 9:00 a.m. on the following day October 1 for NYC Transit, yet he reported to JFD at 6:55 a.m. on October 1, 2015.

6. On December 7, 2015, Richardson claimed to have worked from 8:00 a.m. to 5:00 p.m. for NYC Transit, yet he reported to JFD multiple times between 9:03 a.m. and 2:13 p.m. on December 7, 2015.
7. On February 18, 2016, Richardson claimed to have arrived at work at 11:00 p.m. for NYC Transit yet he reported to JFD at 10:41 p.m.

When confronted with the above-described conflicting hours, Richardson claimed he must have made mistakes on his NYC Transit timesheets. Richardson eventually conceded that the JFD records were more reliable than his flawed method of tracking of his NYC Transit hours.

## POLICY

### MTA All-Agency Code of Ethics

Section 4.07, Other Employment and Outside Activities, states, in pertinent part,

Employees are prohibited from outside employment ... or other outside activity that interferes or is in conflict with the proper and effective discharge of the individual's official duties or responsibilities. Each MTA Agency requires that Employees devote appropriate time and attention to their employment with that agency. Full-time employment with an MTA Agency is deemed to be an Employee's primary employment. All Employees must be fit for duty during their work hours.

MTA Employees who wish to engage in outside employment/activities must consult with their Agency's Human Resources Department or Ethics Committee to determine what dual employment or outside activity policy exists at the employing Agency.

Employees may engage in outside employment/activity provided that (1) such employment/activity does not interfere with their ability to devote appropriate time and attention to their employment with their MTA Agency; (2) such employment /activity does not violate the specific guidelines for other employment set by their MTA Agency; ... and (4) they obtain the required approvals as set forth in the specific procedures for approval of other employment set by their MTA Agency.

### NYC Transit Rules and Regulations on Time and Attendance

Chapter 1 states in pertinent part the following:

#### Rule 5: Reporting for Duty

- 5(a) Employees must report for their assignments as directed. Absence from duty without proper authority is regarded by the Authority as willful

neglect of duty and as a serious breach of discipline. All leaves of absence for personal business must be approved in advance, as per each division policy, except for such emergencies as death in immediate family and other substantiated unforeseeable occurrences. Sick leave, whether with or without pay, will be granted only upon proper evidence that the employee was actually ill and unable to perform his/her duties during the period of the absence.

5(b) If an employee reports late for duty, he/she will be penalized for his/her tardiness and he/she may not be permitted to work on that day.

5(c) Employees must give proper notice in person or by telephone to their assignment desks or control offices of their intention to be absent from work at least one hour before their schedule reporting time, so that a substitute may be provided if necessary, unless a leave of absence has been previously authorized. Such advance notice will be recorded by the person receiving the message. Failure to give such notice will be regarded as a separate violation of the rules, in addition to being recorded as reporting late or absent without leave. Such notice will not be regarded as a valid reason for absence from duty nor shall the employee be deemed to be excused from duty by reason of such notice. Every absence from duty without previous proper authority is considered neglect of duty which is detrimental to service.

#### Rule 8: Reports by Employees

8(a) Written or oral reports must be complete and accurate. Employees who knowingly submit, or make, reports containing false statements shall be charged with misconduct and incompetence.

#### NYC Transit Policy/Instructions on Dual Employment and Outside Activities

NYC Transit Policy/Instruction For Dual Employment Number 4.23.2 (P/I) states, in pertinent part:

### Section I, Policy

Full-time employment with the Authority is deemed to be an employee's primary employment. All employees must be fit for duty during their work hours. The Authority's employees may engage in other employment provided that (i) such employment does not interfere with their ability to devote appropriate time and attention to their employment with the Authority... and (iii) they follow the procedures and obtain the required approvals as set for the in this Policy/Instruction."

### Section III, Definitions:

Dual Employment is defined as "Employment with the Authority held concurrently with any other employment, public or private, including self-employment;" and

Employment as "The performance of services conducted on a regular basis, for or on behalf of any entity or individual including oneself (self-employment) to obtain economic or other material benefit.

### Section IV, Guidelines:

Requests for dual employment will be reviewed and approved on a case-by-case basis" and determined based on the following guidelines:

1. The dual employment shall not interfere with the proper and effective discharge of the employee's duties with the Authority or otherwise render the employee unfit for duty;
2. The dual employment shall not create a conflict of interest or an appearance of a conflict in the performance of the employee's employment with the Authority;
3. A current employee may not commence a secondary job until his/her dual employment request has been approved in writing; and

6. Division/Department Heads, in making determination on dual employment requests, will take into consideration the total, combined work time, type of work being performed, and commuting time.

Section VI, Administration and Responsibilities (B) Employees:

All current employees must obtain the Authority's approval in writing ... before engaging in any occupation ... outside the Authority.... (emphasis original)

Violation of these procedures may subject an employee to discipline, up to and including termination of employment, and/or may expose an employee to civil or criminal penalties.

*Based on NYC Transit and JFD's records it is clear that Richardson was not at NYC Transit during the eight instances described above as he claimed on his timesheets. It is also clear that NYC Transit did not have clear policy and procedures in place to address volunteer outside activity such as firefighting, for which Richardson received pecuniary benefits other than a salary. Finally, Richardson's activities and time reporting was not adequately supervised.*

*NYC Transit's Dual Employment & Outside Activity Policy  
As it Relates to Volunteer Firefighters*

Since we began our investigation, NYC Transit has started to make employees aware that volunteer firefighting is subject to dual employment/outside activity approval. NYC Transit policy currently defines "employment" as activity that provides "economic or other material benefit" to an employee. Volunteer firefighters are not paid a salary but some, including Richardson do receive tax abatements, stipends, vehicles, or pension-like benefits or other pecuniary benefits. NYC Transit needs to take steps to ensure that all of its employees, especially those in public-safety and safety-sensitive positions, who are subject to hours of service restrictions, do not engage in volunteer firefighting or other public service activities without proper review and approval. NYC Transit should review its policies and practices related to dual employment and outside activity approval.

## FINDINGS

1. Richardson violated NYC Transit Rules and Regulations, Chapter 1, Rule 5 (a), (b) and (c) in that he was absent from duty without proper authority on at least eight occasions.
2. Richardson violated NYC Transit Rules and Regulations, Chapter 1, Rule 8(a) by submitting inaccurate Time and Attendance Reports on at least eight occasions.
3. NYC Transit's current policy lacks clarity regarding dual employment and outside activities, including volunteer firefighting, that are not salary-based yet provide other pecuniary benefits.
4. Richardson violated MTA Code of Ethics § 4.07 by failing to obtain permission prior to engaging in outside activity as a volunteer firefighter.

## RECOMMENDATIONS

1. NYC Transit should impose discipline on Richardson as it deems appropriate, up to and including termination.
2. NYC Transit should review its dual employment and outside activity policies and implement policies and procedures to specifically address outside activities, including volunteer public service, that provide pecuniary benefits other than salary with particular scrutiny to the following areas of concern:
  - (a) *Definition of Employment:* NYC Transit's definition should clearly communicate to its employees that "economic or other material benefit" is not limited to salary. Therefore, even "volunteer" work that provides non-pecuniary benefits should be considered outside employment or activity that requires prior approval.
  - (b) *Approval for Dual Employment and Outside Activity:* NYC Transit's policy should clearly communicate to employees that explicit approval for dual employment and outside activity is necessary to ensure compliance with the hours of service restrictions and proper supervision.
  - (c) *Priority of NYC Transit Employment:* MTA Code of Ethics § 4.07, NYC Transit Policy/Instruction 4.23.2 and NYC Transit Rules 5 and 8 are clear that an employee's first priority is his or her MTA job and require reporting to work and accurate reporting of time worked. NYC Transit's dual employment and outside activity policy should include detailed procedures controlling if and when an employee may respond to outside activity emergencies during work hours and how such time is accounted for.

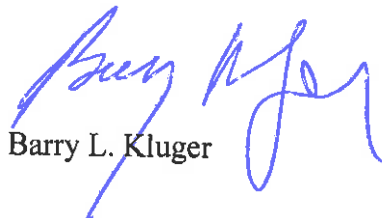


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- (d) *Supervision:* NYC Transit management should ensure that all employees, who engage in outside activity, such as volunteer firefighting and other volunteer public service activities, obtain prior authorization for such activities and receive appropriate supervision.

As always, we appreciate your continued courtesy and cooperation. Should you have any additional questions, or need additional information, please feel free to contact me at (212) 878-0007 or Demetri M. Jones, Deputy Inspector General at (212) 878-0279.

Very truly yours,

  
Barry L. Kluger