



Barry L. Kluger
Inspector General

Office of the Inspector General
Metropolitan Transportation Authority
Two Penn Plaza, 5th Floor
New York, New York 10121
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April 9, 2018

Andrew Byford
President
MTA New York City Transit
2 Broadway, 30th Floor
New York, NY 10004

**Re: Misconduct by NYC Transit
Department of Subways
Superintendent
MTA/OIG #2018-06**

Dear Mr. Byford:

The Office of the MTA Inspector General (OIG) has completed its investigation into an allegation that New York City Transit (NYC Transit) Department of Subways Superintendent Luis Puma (Puma) engaged in misconduct by attempting to dissuade subordinate employees from reporting a safety issue. Our investigation substantiated the allegation. We also found that Puma submitted a false disciplinary referral to Labor Relations regarding the incident and made false statements to OIG investigators. We further found that Maintenance Supervisor I (MSI) Philip Austin (Austin) refused to provide a required safety form upon request and filed a false G2 statement. We recommend that NYC Transit impose discipline on Puma, up to and including termination, and discipline Austin, as it deems appropriate.¹

INVESTIGATION

Puma was hired by NYC Transit on April 23, 1990. He was promoted to his current position of Superintendent on October 24, 2011, and is currently assigned to Department of Subways, Maintenance of Way, Infrastructure, Heating & Air Conditioning. Puma manages approximately fifty employees in a group known as "HVAC" and reports to General Superintendent (GS) George Abraham (Abraham).

Austin was hired by NYC Transit on October 29, 2001. He was hired as a Transit Electro Mechanical Maintainer (TEMM) in the Department of Subways, Maintenance of Way, Infrastructure, Heating & Air Conditioning. Three years ago, he was promoted to Maintenance

¹ OIG learned that Chief of Infrastructure Daniel Ronan imposed discipline on Puma for some of his misconduct before OIG began its investigation.

Supervisor (MSI) in the HVAC unit and reports to Puma. During our investigation, OIG staff interviewed several NYC Transit employees including Puma, Austin, and other supervisors and subordinate employees in the HVAC group, including TEMM Abdallah Jaaba (Jaaba). Jaaba and his coworkers report to Austin, who in turn reports to Puma.

Jaaba told OIG staff that on February 9, 2016, he and four other TEMMs, Sun Pan Lom (Lom), Igor Kruglyak (Kruglyak), Joy Nangini (Nangini) and Justin VanSicklen (VanSicklen), were assigned to install heating coils using a scissor lift at the 207th Street Shop (207th Street). According to Jaaba, the five TEMMs all felt it was unsafe to use the lift for that work, and Lom² and Kruglyak requested from Austin, a Safety Dispute Resolution Form (safety resolution form) which is used to assert an employee's belief that he has been directed by a supervisor to violate a NYC Transit safety rule or law. Jaaba said that Austin ignored the requests and instead placed a call and left the room. A few minutes later, Austin returned and informed the five TEMMs they were being reassigned to another job.

The following day, February 10, 2016, all five TEMMs were asked by Maintenance Supervisor II (MSII) Rohan McLaren (McLaren), at Puma's direction, to submit "G2" forms (generic memorandum forms used for various statements) to explain why the previous day's assignment was unsafe. All five TEMMs submitted their respective G2 forms to McLaren, who gave them to Puma. Austin also submitted a G2 form.

Approximately five days after the G2 forms had been submitted, Puma called a meeting with Jaaba, VanSicklen, Union Shop Steward Paul Romano (Romano), and Austin. According to Jaaba, Puma told Jaaba and VanSicklen that they were on probation and if they did not retract the "letters" (referring to the G2 forms), they would be fired. Jaaba stated he left the meeting afraid of losing his job.

TEMMs Kruglyak, Nangini and VanSicklen provided OIG staff with accounts of the incident that were consistent with each other and corroborated Jaaba's statements. They stated the scissor lift was unsafe to move heavy heating coils; they all requested safety resolution forms from Austin; Austin did not provide the safety resolution forms when requested; and Austin instead reassigned the entire group to another job. Kruglyak told OIG staff that after the G2 forms were submitted, Puma confronted the TEMMs, called them liars and requested they rewrite their G2s. Kruglyak and Nangini both stated Puma was angry because he was named in the write-up as directing Austin not to give the safety resolution form to the TEMMs thus preventing them from reporting the safety issue.

² Lom retired on March 31, 2016.

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Jabba told OIG staff that on March 24, 2016, he spoke to McLaren and requested leave to visit his sick father who lived outside the United States. McLaren verbally authorized Jaaba's leave request. At some time thereafter, Puma called a second meeting with Jaaba which Jaaba recorded. McLaren, Austin and Romano were also present at the meeting. During that meeting, Puma threatened that he would not approve Jaaba's leave request unless Jaaba retracted his G2 form. OIG staff reviewed the recording Jaaba made which includes the following statements from Puma:

“What I want from him is to retract his letter, that's all I want him to do, retract the letter, sign and date it. That's what I want and his thing will be approved.”
“It's a negotiation. I'm a business person, understand, we're negotiating this business. All the time is gotta be give me, give me, give me, give me and when it comes to my side, I don't get nothing in return. You understand. That's not the way it works here.”

According to Jaaba, as well as VanSicklen, McLaren and Romano, there were additional meetings with Puma relating to the G2s, including one attended by Jaaba, Abraham, Romano and McLaren. According to Romano, Puma said at the meeting that he (Puma) spoke to Labor Relations, that Jaaba and VanSicklen were on probation and if the employees did not retract the G2s they would be fired. Romano stated he tried to reason with Puma to no avail. Romano stated that Puma threatened to deny Jaaba's request for leave to visit his sick father as retaliation for not retracting the G2.

TEMM VanSicklen corroborated Roman and Jaaba's account of the meeting with Puma in which Puma claimed he had spoken to Labor Relations, that they were on probation, and that if they did not change their G2s they would be terminated.

VanSicklen said he attended a subsequent meeting with Abraham during which Abraham told Jaaba and himself, “this is going too far I want this squashed,” and “you could end up losing your jobs over this.” McLaren told OIG staff a similar version of the meeting called by Abraham, stating that Abraham told VanSicklen and Jaaba that he wanted their G2 forms retracted, that they were probationary employees and that submitting a false G2 would not look good on their record.

McLaren told OIG investigators that Puma told him the assigned TEMMs had stated that the job was unsafe and were reassigned to different jobs. According to McLaren, the day after the incident, Puma told him to have the TEMMs complete G2 forms explaining why the job was unsafe. He said that a few minutes after the completed forms were given to Puma, Puma appeared angry and told the TEMMs to change the forms. McLaren said that, despite Puma's insistence, the employees told Puma they were not going to change anything because their statements were accurate.

McLaren stated that on the same day the G2s were submitted, he and Puma went to the job site at issue and found no safety issues because the job could have been done safely using equipment other than the scissor lifts. McLaren also recounted that Puma requested a meeting with Jaaba to discuss his leave request. According to McLaren, Puma told Jaaba the only way he would approve his leave is if he (Jaaba) retracted the G2.

Romano also corroborated that Puma called a second meeting with Romano, Jaaba, McLaren and Austin during which Puma told Jaaba to retract his G2. Romano stated at this second meeting Romano asked Puma why he had not approved Jabba's request for leave to see his father, to which Puma responded, "You do for me and I do for you."

Romano corroborated that there was a third meeting held about the G2s with Jaaba, VanSicklen, Abraham, McLaren and himself. Romano stated that Abraham wanted the G2s quashed because Puma's name appeared on it, and that Abraham asked Jaaba and VanSicklen to retract the G2s. Romano recalled Abraham saying, "Let's try and work together, take the letter and change it to tell the truth." Romano stated that Jaaba and VanSicklen declined to change anything maintaining that the G2s were accurate.

Austin corroborated that on February 9, 2016, the crew assigned to hang coil at the 207th Street shop told him that the assignment was unsafe for several reasons including, that a scissor lift was not safe for the work at hand. Austin admitted that the employees asked for safety resolution forms, and added when he told Puma of the request, Puma told him, "Forget about that, don't give them the safety resolution form, just have them do a G2 explaining why they could not do the job and reassign them." When asked why his own G2 form stated that no one had asked for a safety resolution form, Austin stated that he was protecting Puma, and that Puma had instructed him not to give the safety resolution form to the employees.

Austin also claimed that Puma was in the habit of reassigning unsafe tasks until a team was found that would not challenge the job for safety reasons. Kruglyak and Nangini made similar assertions about Puma.

According to Abraham, Puma's direct supervisor, Puma told him that the crew had refused to do the assignment on February 10th at 207th Street, claiming that it was unsafe but did not explain why the job was unsafe, so they were reassigned by the supervisor on duty. Moreover, Puma told Abraham that the maintainers wanted overtime and only claimed the assignment was unsafe because overtime was not given to them.³ Abraham told investigators that he believed that the TEMMs had been disciplined for refusing the job without cause. Abraham added that Puma told him that the TEMMs never asked Austin for a safety resolution form, and that Puma and

³ All of the TEMMs denied refusing to do work unless it was on overtime and denied performing a similar job in the past while on overtime.

McLaren went to 207th Street the day after the incident and determined that the assignment was safe.

Abraham stated he later learned about Jaaba's recording of one of Puma's meetings when a union representative played a part of the recording for Abraham and his supervisor, Assistant Chief of Infrastructure Daniel Ronan (Ronan). The portion of the recording that Abraham and Ronan heard only included the portion in which Puma asked Jaaba to retract his statement. Based on the portion of the recording they heard, Abraham and Ronan called Puma to Ronan's office to give his own statement about conditioning Jaaba's leave request on the retraction of his G2. According to Abraham, Puma stated that Hearing Officer Joseph Conte (Conte) from Labor Relations told him to have Jaaba retract the G2 because Jaaba was on probation. Abraham said he and Ronan determined that Puma should be disciplined with a written reinstruction and training.⁴

Abraham denied meeting with McLaren, Jaaba, VanSicklen and Romano to discuss the G2s that Jaaba and VanSicklen submitted, and denied telling them to retract their G2s because they were on probation. However, Abraham's denials are contradicted by the consistent accounts of McLaren, Jaaba, VanSicklen and Romano.

According to Jaaba and Romano, at the third meeting Abraham said, "Let's work together, take the letter and change it to tell the truth" and that Abraham stated that he wanted Jaaba's G2 retracted and wanted to put an end to what was going on.

Ronan confirmed Abraham's account of learning about the recording of Puma and having Puma give a statement about the issue of Jaaba's leave request approval. According to Ronan, a union representative, a Labor Relations representative and Ronan himself all agreed Puma should be disciplined via written reinstruction. Ronan decided to impose reinstruction because he felt it would be best for Puma to receive progressive discipline consisting of verbal counseling and written reinstruction. However, Ronan admitted that he never listened to the entire recording, and more specifically, the portion consisting of Puma's repeated insistence that he needed something in exchange for approving Jaaba's leave request, before calling Puma in to give his statement. Ronan also admitted he did not speak to any other witnesses.

On April 22, 2016, Puma was directed to attend two training classes: Increasing Policy Awareness and Essentials of Management for the New Culture. Puma's disciplinary record reflects that he committed the violation of "rude behavior" and received the penalty of "re-instruction."

⁴ Jaaba ultimately received approval for his requested leave from Puma.

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OIG staff interviewed Puma on two occasions. During the initial interview, Puma stated that in early 2016 he received a call from Austin, who informed him that a few employees at 207th Street were challenging the job for safety because, according to Puma, they wanted to do the work on overtime. Puma claimed he told Austin that if the employees were not saying what the safety issue was, then he should reassign them to another job, and leave that job for a later date until the safety issues were resolved.

Puma stated the next day he asked the employees to submit G2s explaining why the job was unsafe. Puma claimed that Hearing Officer Conte reviewed the G2s and informed Puma that two of the five employees were on probation, and could lose their jobs if the facts in their statements were not true. Puma claimed that Conte told him to speak to the two probationary employees and have them retract or rewrite their statements. Puma implied that he was following Conte's suggestion and claimed he asked the employees to retract the G2s because he did not want anyone to lose their job.

Puma denied linking the retraction request to his approval of Jaaba's leave request. He repeatedly told OIG staff that he was only relaying what Conte suggested and trying to protect Jaaba. Puma asserted his intentions were to help, not hurt, Jaaba. Puma further asserted that Jaaba's leave had already been approved at the time of the recorded conversation. Despite his denials that he had done anything wrong, Puma nonetheless claimed he was very sorry for the way he handled the situation and admitted he had made a mistake.

Puma subsequently provided OIG staff with an email he sent on February 11, 2016, to Conte, Abraham and others, in which Puma stated, in part, that he visited 207th Street incident site on February 10, 2016, and found no safety issues. His email also falsely stated that the crew never requested safety resolution forms until they were asked to write G2s. Puma's email message characterized the crew's actions as "a "premeditated and planed [sic] delay job action taken by all five maintainers because no O.T. was granted and [he needed Labor Relations] to take action and have them disciplined."

According to Conte, he received a telephone call during which Puma told him that Puma had requested G2s from some employees and that two of the employees were on probation. Conte also recalled telling Puma, in essence, to tell the employees to tell the truth on the forms because if they did not they could face problems. Conte said he probably told Puma that if Labor Relations found anything false in the G2s, the employees could lose their jobs, but denied telling Puma to have the employees retract or rewrite their G2s.

During a second interview by OIG staff, Puma repeated his earlier claim that at the time Austin contacted him the crew had not requested a safety resolution form. Puma said he had read the G2s, determined that the crew lied, and contacted Labor Relations to recommend disciplinary action. Puma also repeated his earlier claim that Conte told him to have the two probationary

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employees retract their G2s because they would be in danger of losing their jobs. Puma admitted that he sent an email to Conte on February 10, 2016, the day after the incident, requesting that the crew be disciplined for submitting false G2 forms, and that he recommended disciplinary action be taken against the crew for lying about the job being unsafe.

When confronted with the contradictions between his statements and the statements of the other witnesses, Puma finally admitted that the crew's G2s were, in fact, accurate. He also admitted that he tried to have the crew change their G2s because he did not want it to reflect poorly on him. Puma stated that he knew that it was wrong to request disciplinary action against the crew for reporting the truth and admitted that it was improper for him to tell Austin to disregard safety protocol by not issuing a safety resolution form immediately upon request. Puma further admitted he falsely told the TEMMs that he was instructed by Conte to have them retract or rewrite their G2 statements. Puma submitted a written statement to OIG investigators.

POLICY/RULES

MTA All-Agency Code of Ethics

MTA All-Agency Code of Ethics, Section 1.05, Duty to Disclose provides, in pertinent part that:

Employees must promptly report any violation or potential violation of the MTA's Codes of Ethics as well as any actual or potential violation of law, regulations, or policies and procedures, relating to the MTA.

MTA All-Agency Code of Ethics, Section 1.06, No Reprisals/Whistle-Blowing, provides:

Employees who report violations or potential violations of this Code or any actual or potential violations of laws, regulations or policies and procedures are protected under MTA All-Agency Whistleblower Protection Policy, No. 11-041 and will not be subjected to punitive sanctions, reprisals, or other penalties solely for reporting such violations.

MTA All-Agency Policy Directive

The Whistleblower Protection Policy, Number 11-041, provides, in pertinent part:

MTA employees are encouraged to report any Wrongful Act. No MTA Employee shall take any Adverse Action against another MTA Employee because of such MTA Employee's lawful disclosure or reporting of information concerning a Wrongful Act or because of such MTA Employee's role as a Whistleblower. An MTA Employee is prohibited from interfering with another MTA Employee's disclosure of a wrongful act.

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Violations of this policy are subject to disciplinary action up to and including termination from employment.

MTA All-Agency Code of Ethics, Section 1.07, Cooperation with Audits and Investigations, provides, in pertinent part:

Employees must cooperate fully and honestly with audits and investigations conducted by the MTA Inspector General Failure to so cooperate will subject an Employee to appropriate disciplinary penalty, up to and including dismissal.

NYC Transit Rules and Regulations

Rules and Regulations Governing Employees of MTA New York City Transit Authority, Manhattan, and Bronx Surface Transit Operating Authority and South Brooklyn Railway

Rule 4(a) provides:

employees are required at all times to perform their duties in accordance with these rules, Policy Instructions and their division's instructions. They must not, whether on or off duty, engage in activities which will interfere with the proper performance of their duties.

Rule 4(d) provides:

It is the duty of all employees to immediately report to their superiors all dangerous, hazardous or defective conditions which they may observe or which may be brought to their attention. If it is a minor condition which they are qualified to correct, they should correct the condition to the extent of their ability and report the work performed by them to their immediate superior. Employees are not prohibited, under this or any other Authority Rule, from also reporting safety violations to governmental authorities with jurisdiction over the safety of the Authority's operations.

Rule 8(a) provides:

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.

Rule 10(a) provides:

Employees are required to avoid behavior which would tend to create adverse criticism of the Authority or of the System. Their conduct, whether on or off duty on System property, is required to be such as to merit the confidence and respect of the public and their superiors.

NYC Transit's policy regarding the Safety Rule Dispute Resolution Form is contained in Subways Bulletin 15-35, which directs that the form must be made available from the supervisor at the work location to any TWU-represented employee (or group of employees) who wishes to raise a safety allegation.

SUMMARY

TEMMs Jaaba, Lom, Kruglyak, Nangini and VanSicklen raised a safety issue and requested forms to report the issue. The employees' supervisor, Austin – at the direction of Puma – refused to provide safety resolution forms, and reassigned the employees to another project. Puma later directed that the employees provide statements via G2 forms, which Puma falsely characterized to his own supervisors and Labor Relations as inaccurate and, thereafter, improperly referred the employees for discipline by Labor Relations. Puma further improperly attempted to coerce Jaaba and VanSicklen to retract or falsify their G2 statements with threats of termination. Puma also attempted to coerce Jaaba to retract his G2 statement by threatening to deny Jaaba's leave request. Puma compounded his misconduct by repeatedly lying to OIG staff during his interviews. Austin also submitted a false G2 statement in an attempt to protect Puma's initial misconduct.

Although management imposed discipline on Puma, the discipline did not take into account all of Puma's misconduct, because Abraham and Ronan were not aware of the full extent of Puma's misconduct including providing false information to Labor Relations, lying to management about the February 9, 2016, incident and directing Austin to prevent employees from reporting a safety issue.

Unfortunately, Abraham and Labor Relations failed to conduct a thorough review of all the facts surrounding Puma's serious misconduct that were readily available and should have been known at the time the events transpired. The nature and extent of Puma's misconduct is highly disturbing and included: falsely accusing subordinate probationary employees of making false statements in G2 forms; lying to Labor Relations about the G2 forms' accuracy and improperly referring subordinate employees for discipline; threatening to deny a subordinate's leave request in order to coerce him to not report a potential safety issue; threatening termination against two probationary TEMMs for attempting to report a safety issue; and directing a subordinate supervisor to prevent employees from reporting a potential safety issue.

Such misconduct undermines a culture of “safety first” as it could produce a chilling effect on reporting of potential safety issues. This type of misconduct is even more disturbing where, as here, the misconduct targeted probationary employees Jaaba and VanSicklen, who unfairly faced the threat of termination for reporting a potential safety issue.

FINDINGS

1. Superintendent Puma improperly directed MSI Austin to withhold Safety Rule Dispute Resolution forms from employees as required by Subways Bulletin 15-35, in violation of NYC Transit Rule 4(d).
2. Superintendent Puma intentionally provided false information to the Office of Labor Relations in his request for disciplinary action against TEMMs Jaaba, Lom, Kruglyak, Nangini and VanSicklen, in violation of MTA All-Agency Code of Ethics, Section 1.06 and NYC Transit Rules 8(a) and 10(a).
3. Superintendent Puma threatened TEMMs Jaaba and VanSicklen with discharge, in violation of MTA All-Agency Code of Ethics, Section 1.06 and NYC Transit Rule 10(a).
4. Superintendent Puma threatened TEMM Jaaba with the denial of leave in an attempt to compel Jaaba to retract his written G2 statement regarding a safety condition, in violation of NYC Transit Rule 10(a).
5. Superintendent Puma made multiple false statements to OIG staff, in violation of MTA All-Agency Code of Ethics, Section 1.07.
6. MSI Austin failed to provide Safety Rule Dispute Resolution Forms, as required by Subways Bulletin 15-35, in violation of NYC Transit Rule 4(d).
7. MSI Austin submitted a false G2 statement dated February 9, 2016, in violation of NYC Transit Rules 8(a) and 10(a).
8. MSI Austin failed to report Puma’s misconduct, in violation of MTA Code of Ethics Section 1.05.
9. GS Abraham and Labor Relations failed to conduct a thorough inquiry into the events surrounding Puma’s misconduct.

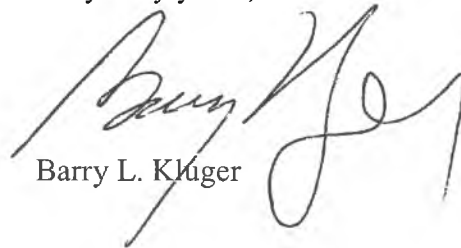
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RECOMMENDATIONS

1. We recommend that NYC Transit impose discipline on Puma, up to and including termination.
2. We recommend that NYC Transit impose discipline on Austin as it deems appropriate.
3. We recommend that NYC Transit management conduct a full review of GS Abraham and Labor Relations' handling of this matter and take action as it deems appropriate.
4. We recommend that NYC Transit fully review and analyze the practice of reassigning work crews that report potential safety issues to other jobs, as asserted by Austin, Kruglyak and Nangini.

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

Very truly yours,



Barry L. Kliger

cc: Tim Mulligan, Executive Vice President
Paige Graves, NYCT/Bus Vice President & General Counsel