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Inspector General

Office of the Inspector General

Metropolitan Transportation Authority

Two Penn Plaza, 5th Floor

New York, New York 10121

212-878-0000

March 30, 2018

Catherine Rinaldi
President
MTA Metro-North Railroad
420 Lexington Avenue
New York, NY 10170-

**Re: Abuse of Time and Property, and
Failure to Supervise in Metro-North
Railroad Track Department
MTA/OIG #2018-07**

Dear Ms. Rinaldi:

The Office of the MTA Inspector General (OIG) has completed its investigation into an allegation that Vehicle Operator Jason Munz (Munz), Metro-North Railroad (MNR), Track Department, stole MNR fuel. While our investigation did not substantiate the allegation, OIG found that Munz worked extended consecutive hours and engaged in abuse of time and misappropriation of MNR property. We also found that Track Department Assistant Supervisor Francis Scala (Scala) failed to adequately supervise Munz. We recommend that MNR discipline Munz up to and including termination, and discipline Scala as it deems appropriate. We also learned that MNR does not have hours of service policies in place to address potential safety issues that OIG found arising from Munz's extended consecutive hours of driving. We further recommend that MNR review applicable industry standards and the Motor Carrier Act, and develop policies to address the potential safety issue. We also recommend that MNR implement internal controls for overtime approval and usage for vehicle operators.

BACKGROUND

Munz joined MNR in April 2006. He is a Motor Vehicle Operator A2 in the Track Department, based out of the Poughkeepsie Yard (POK). During the time period of our investigation, he operated MNR Truck #9206M, a tractor that can be attached to one of several different trailers depending upon his specific job assignment, including moving heavy equipment and heavy supplies over long distances to and from work sites. For this position, Munz possesses a commercial driver's license (CDL). There are few MNR employees who are qualified for Munz's position. Munz works alone the vast majority of the time with little to no supervision. On the rare occasions when he is not assigned to drive his vehicle, he can be assigned to work as a machine operator or laborer. Munz's work hours are 8:00 a.m. to 4:00 p.m.

Scala joined MNR in May 2007. He has been the Assistant Supervisor overseeing the maintenance and repair of track on a portion of the Hudson Line from Croton Yard to Poughkeepsie since 2014. Scala supervises and assigns Munz's work and his work hours are 7:30 a.m. to 4:00 p.m.

INVESTIGATION

Our investigation covered the six-month period of January 1 through June 30, 2016. OIG staff reviewed MNR records including daily reports and time and attendance records for Munz's regular and overtime work hours. OIG investigators conducted surveillance of Munz's activities, both visually and using MNR's Global Positioning System (GPS) data, to follow movements of his MNR vehicle. We also interviewed Munz and Scala.

Extended Consecutive Hours of Service as a Potential Safety Issue

During the six-month period reviewed, Munz worked an extensive amount of consecutive hours, including overtime hours. We determined that on 29 separate occasions during the six-month period, Munz worked consecutive hours ranging from 14 hours up to 32 hours. For five of those occasions, Munz was on duty for 32 consecutive hours. During these extended periods Munz admittedly slept or rested in his MNR vehicle alongside public roadways on several occasions while earning overtime pay. The five most significant occasions include:

1. February 2, 2016: 2 hours and 55 minutes
2. March 31-April 1, 2016: 7 hours and 20 minutes
3. May 23-24, 2016: 7 hours 46 minutes
4. June 9-10, 2016: 6 hours and 28 minutes
5. June 20, 2016: 4 hours and 51 minutes

During his interview Munz claimed that he was often tired while driving and admitted he had slept in his MNR vehicle on the side of the road many times. Munz also stated that there were no MNR rules regarding hours of service, and that no one at MNR ever told him he was working too many hours. Munz stated he was not sure who authorized overtime and that he "just [did] the job and whatever time it ends, it ends." He stated that he did not notify any supervisor in advance of working his overtime; there were no rules about who to call for approval; and it was his decision whether or not to notify anyone of his decision to incur overtime.

During his interview Scala stated that he did not want trackmen or motor vehicle operators to be tired at work, but asserted that working overtime was within Munz's sole discretion. Scala told OIG staff that he himself did not work overtime during the week; generally discouraged middle of the night calls; and there was no central command center for Munz to check in with.

Scala denied knowing that Munz had worked 32 consecutive hours on several occasions, but acknowledged that it was an excessive amount of time. Scala also denied knowing that Munz

frequently pulled over on the side of the road to sleep during his duty hours, but added that Munz had only admitted to him (after Munz's OIG interview), that he had slept on the side of the road in his truck for as much as six hours at a time. Scala agreed that Munz should not sleep during his tour and that the lengthy tours were a potential safety issue.

Scala and Munz both asserted that compliance with union policies caused the potential safety issues arising from excessive hours of service. Munz claimed he had asked a couple of years earlier to have someone else share the driving responsibility with him, and claimed he was told by a union representative that the person who covered for Munz was not allowed to do so on a permanent basis under union rules. According to Scala, a union representative told him that safety issues do not trump seniority policies, and that if the employees want the overtime, they are entitled to it despite number of hours of service or sleep issues.

Abuse of Time

OIG investigators also observed Munz conducting personal activities during his work hours, as set forth below:

- On May 26, 2016, OIG investigators observed Munz, while on overtime, working on/cleaning his personal vehicle at the Poughkeepsie facility;
- On June 9, 2016, OIG investigators observed Munz, while on overtime, working on his personal vehicle at the Poughkeepsie facility; and OIG investigators also observed Munz use his personal vehicle to drive to a Home Depot store in Poughkeepsie and depart the store with items.
- On June 16, 2016, OIG investigators observed Munz, while on his regular tour, drive his personal vehicle to a Home Depot store in Poughkeepsie and, after leaving the store with purchases, drive to a gas station.

When questioned, Munz admitted that he did personal shopping during work hours, possibly as much as twice in one day. OIG investigators questioned Scala about the above-described observations of Munz conducting personal activities during MNR work hours. Scala stated that there was no reason for Munz to do those activities on MNR time.

Unauthorized Removal of MNR Property

On two occasions, OIG investigators observed Munz remove MNR property from a MNR facility or work site without permission. First, on March 16, 2016, an investigator saw Munz leave the Highbridge Yard/Depot Place work site with an empty flatbed trailer and stop on the MNR right-of-way. Shortly thereafter, investigators observed Munz's tractor-trailer loaded with what appeared to be part of a bench. A few hours later, at POK, Munz removed that item from

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the MNR tractor trailer, placed it in his personal pickup truck and drove away. On a second occasion, on March 29, 2016, investigators saw Munz at POK load a strip of metal from inside the building into the bed of his personal pick-up truck and drove away.

Munz admitted that he has removed material from MNR's right of way and POK since as far back as 2012, but could not produce any signed property release for any items he removed later than 2012. Munz stated that 2012 was the last time he obtained a signed release for removal of any material from MNR property and admitted that he continued to remove material from MNR property after 2012. He stated that he picked up damaged material "all the time" from contractors. He added he took 2x4 lumber from Bridgeport Yard to burn as firewood, but claimed he did not recall taking a bench or a strip of metal.

Scala stated that employees were not allowed to take scrap, new or damaged material, or equipment from the right of way unless they obtained a release. Scala was only aware of one release that Munz had obtained at the end of 2016 for plywood forms. He stated he did not know that Munz had taken the items that OIG investigators described or whether Munz had releases for those items.

Failure to Provide Effective Supervision

Scala acknowledged to OIG staff that he was responsible for overseeing Munz's work hours, and claimed that he would have questioned Munz if the hours Munz reported seemed excessive. Scala stated that he authorized Munz's overtime "based on the needs of service," without giving Munz a time limit to complete a job. Scala said he trusted that Munz was doing his job and nothing else. In fact, Scala never questioned any of the extended hours that Munz reportedly worked which Scala admitted, in retrospect, were excessive.

According to Munz, there were numerous times when he felt so fatigued during his regular and/or overtime work hours work that he decided to sleep in his vehicle rather than go off duty, thus creating a potential safety issue. Munz failed to bring this potential safety issue to Scala's attention. Compounding the problem, Scala failed to adequately supervise Munz's work hours and activities, and failed to monitor and verify Munz's overtime records. Munz also admittedly took MNR property without obtaining the proper release forms from appropriate MNR staff.

MNR's Lack of Hours of Service Policies for Motor Vehicle Drivers

OIG staff met with MNR management and also reached out to MNR Labor Relations to determine MNR's hours of service policies for motor vehicles operators. We received conflicting information regarding whether or not MNR follows federal Motor Carrier Act provisions with respect to drivers such as Munz, or is exempt from the Act. In any event, MNR does not have its own written policy and, as evidenced by both Munz and Scala's responses to

our inquiries, neither employee was aware of any rules that applied to Munz's job regarding hours of service.

MNR management did offer examples of why a driver might legitimately be required to be on duty (although not driving continuously) for extended periods including, unanticipated down time at a particular job site; unforeseen equipment needs; and delays due to inclement weather. Management also offered that in such circumstances, it would be expected that the driver would take a rest period. Yet no written MNR policies were cited to describe the procedure to be used in such events including, documentation of hours, limits on hours, when rest should be taken, and an approval process.

MTA and MNR POLICIES

MTA policy #11-037 (All-Agency Assignment and Use of Official Vehicles) states, in pertinent part, that, vehicles are for official business only (section C(1)) and employees must ensure the safe operation of the vehicle (section D(4))

MNR Policy 10-015 (Non-Revenue Vehicle Management and Monitoring) requires employees to adhere to the provisions of the MTA All-Agency Assignment and Use of Official Vehicles Policy 11-037, and provides that violations are subject to appropriate disciplinary action up to and including dismissal.

MNR policy #36-015 (Disposal of Company Property) prohibits employees from removing MNR property without permission. The policy states: "All MTA Metro-North property that is no longer required or useful for operations must be disposed of in the manner most advantageous to MNR. Equipment, material and/or supplies that are deemed obsolete, scrap or surplus ("excess assets") are either sold at the highest price or removed at the least cost to MNR."

FINDINGS

1. Munz abused time by performing personal errands during his MNR tour.
2. Munz misused a MNR vehicle by sleeping in the vehicle during his work tour, in violation of MTA policy #11-037.
3. Munz took MNR property without obtaining permission, in violation of MNR Policy #36-015.
4. Scala failed to properly supervise Munz's daily activities.
5. Scala failed to properly review and verify Munz's time records.

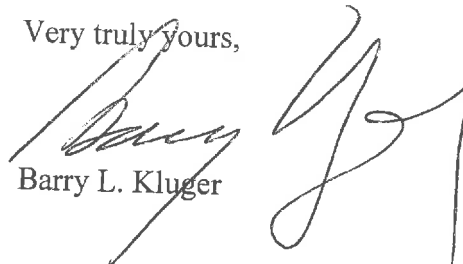
6. MNR lacks policies to address potential safety issues created by motor vehicle operators driving for extended hours.
7. Neither Munz nor Scala were able to articulate any applicable MNR or other policies regarding hours of service rules for Munz's position.
8. MNR management and Labor Relations provided OIG with conflicting information concerning MNR's requirement to adhere to the Motor Carrier Act provisions.

RECOMMENDATIONS

1. MNR should discipline Munz up to and including termination.
2. MNR should discipline Scala as it deems appropriate.
3. MNR should review industry standards and the Motor Carrier Act, and develop policies to address hours of service limits for motor vehicle operators.
4. MNR should implement internal controls for overtime approval and usage for motor vehicle operators.

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 Demetri M. Jones at (212) 878-0279.

Very truly yours,


Barry L. Kluger

cc: Richard Gans, General Counsel