



Barry L. Kluger  
Inspector General

**Office of the Inspector General**  
Metropolitan Transportation Authority  
Two Penn Plaza, 5<sup>th</sup> Floor  
New York, New York 10121  
212-878-0000

April 3, 2018

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

**Re: Unauthorized Dual Employment  
Safety Sensitive Position  
MTA/OIG #2018-12**

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) Track Worker Derrick Matamoro (Matamoro) engaged in unauthorized dual employment. We substantiated the allegation. We recommend that NYC Transit impose discipline on Matamoro, up to and including termination.

### **INVESTIGATION**

Matamoro is a Track Worker, a safety sensitive position in the Track Cleaning Department, with NYC Transit since 1998. His work location is Times Square and his regular hours are from 10 p.m. to 6 a.m., although his current assignment requires him to report at 9 p.m., with Sundays and Mondays as his regular days off. As an employee in a safety sensitive job title, Matamoro is required to have eight consecutive non-working hours prior to reporting to his NYC Transit job. In 1998, upon employment with NYC Transit, and in April 2015, as a result of the OIG investigation referenced below, Matamoro submitted an application for dual employment, both of which were denied.

In 2015, this office substantiated a prior allegation of unauthorized dual employment against Matamoro involving his employment as a truck driver for The Shubert Organization, Inc. (Shubert) (see MTA/OIG #2015-18). We also found that Matamoro had improperly used his NYC Transit sick leave to engage in the unauthorized outside employment and submitted materially false information to NYC Transit in his application to engage in that unauthorized employment. As a result, Matamoro was suspended without pay for 30 days and given a final warning should he engage in same or similar conduct. He also agreed to repay the salary he received for two unauthorized sick days.

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During an interview with OIG staff on February 8, 2018, Matamoro acknowledged he resigned from his employment with Shubert as a condition of being reinstated following the 2015 OIG investigation. Matamoro admitted he started working for Shubert again as a porter in May 2017 and that he works Monday through Friday from 8 a.m. to 4 p.m. Matamoro further admitted he did not seek dual employment approval from NYC Transit before starting work for Shubert in 2017. Matamoro stated he was aware that he was in a safety sensitive title at NYC Transit.

According to Shubert records, Shubert rehired Matamoro on May 1, 2017, as a substitute porter and he earned approximately \$28,596.25 in 2017. NYC Transit records contain no request for dual employment in 2017. Based on his regular work hours for NYC Transit and Shubert, Matamoro also failed to abide by NYC Transit's mandatory eight consecutive non-working hours or rest prior to reporting to work as is required for safety sensitive titles.

## POLICIES

### *The MTA All-Agency Code of Ethics*

MTA All-Agency Code of Ethics Section 4.07, Other Employment and Outside Activities, states, in pertinent part:

Employees are prohibited from outside employment ... that interferes or is in conflict with the proper and effective discharge of the individual's official duties or responsibilities. ... Employees may engage in outside employment /activity provided that ... such employment /activity does not interfere with their ability to devote appropriate time and attention to their employment with their MTA Agency; ... such employment /activity does not violate the specific guidelines for other employment set by their MTA Agency; ... and ... they obtain the required approvals as set forth in the specific procedures for approval of other employment set by their MTA Agency.

### *NYC Transit Policy Instruction for Dual Employment*

NYC Transit Policy Instruction Number 4.23.2 provides, in pertinent part:

Section IV, Guidelines (A) (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."

Section IV, Guidelines (A) (3): "A current employee may not commence a secondary job until his/her dual employment request has been approved in writing."

Section IV, Guidelines (B) (1) regarding employees in safety-sensitive titles, including Bus Operators: “The proposed outside employment may not result in total, combined work time that prevents the employee from having eight consecutive non-working hours in the 16-hour period before reporting to work for the Authority.”

Section VI, Administration and Responsibilities (B) Employee, subsections (1), (2), (3), and (6):

All current employees must obtain the Authority’s approval in writing ... before engaging in any occupation ... outside the Authority. All newly appointed employees who wish to continue other employment must file a dual employment request prior to commencing employment with the Authority. Employees in FTA safety-sensitive titles who previously received approval for dual employment must seek new approval within five (5) days of notification of an assignment change, either in their NYC Transit employment or their outside employment that results in changes in work days, shift changes, work location changes, and/or work assignments... 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.

## FINDINGS

1. Matamoro engaged in dual employment without obtaining prior approval, in violation of MTA All-Agency Code of Ethics Section 4.07 and NYC Transit Policy Instruction 4.23.2.
2. Matamoro’s employment with Shubert prevented him from achieving eight consecutive non-working hours in the 16 hour period prior to reporting for his safety-sensitive NYC Transit job, in violation of NYC Transit Section IV, Guidelines (B) (1).

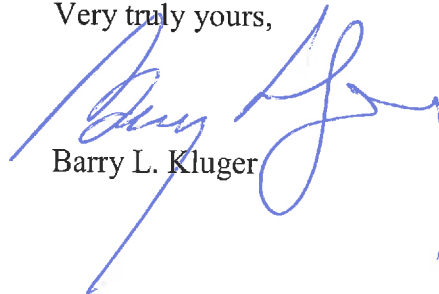
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**RECOMMENDATION**

We recommend that NYC Transit impose discipline on Matamero, up to and including termination.

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 Assistant Deputy Inspector General, Legal and Investigations, Monica J. Hickey-Martin at (212) 878-0081.

Very truly yours,



Barry L. Kluger

Cc: Tim Mulligan  
Executive Vice President