



Barry L. Kluger
Inspector General

Office of the Inspector General

Metropolitan Transportation Authority
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New York, New York 10121
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April 23, 2018

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

**Re: False Statements and Unauthorized
Dual Employment by MNR Machinist
MTA/OIG #2018-16**

Dear Ms. Rinaldi:

The Office of the MTA Inspector General (OIG) has completed its investigation into an allegation that Rocco Ermmarino (Ermmarino), a Machinist in Maintenance of Way, Metro-North Railroad (MNR), was improperly collecting disability insurance by working at an auto service company he owned while recovering from an injury he suffered at MNR. While our investigation did not substantiate the allegation, OIG found that Ermmarino was engaged in unauthorized dual employment. We also found that Ermmarino provided false information on his MNR employment application and on his MNR dual employment request. We recommend that MNR impose discipline on Ermmarino as it deems appropriate, up to and including termination.

BACKGROUND

Ermmarino was hired by MNR as a Machinist in the Maintenance of Way division, a safety-sensitive position, on September 10, 2014, and is assigned to the Stamford Yard in Stamford, Connecticut. According to MNR Human Resources (HR) Planning Analyst Timothy Li, (Li) Ermmarino received the MTA All-Agency Code of Ethics, which sets forth the policy for outside employment, on the same date he was hired and signed an acknowledgment certifying such receipt. Li further stated that the MNR Dual Employment Outside Activity Policy is posted on the MNR Intranet and that HR conducted outreach sessions at Ermmarino's Stamford workplace on multiple occasions. Li also advised OIG staff that although Ermmarino's position is designated safety sensitive, it does not have hours of service restrictions.

INVESTIGATION

According to HR records, on March 19, 2017, Ermmarino injured his shoulder at work and was placed on an occupational leave of absence. Ermmarino did not collect disability payments during his leave of absence. Ermmarino was medically cleared and returned to work on November 14, 2017.

During Ermmarino's leave of absence, OIG investigators conducted several surveillances of Ermmarino during which they observed him on multiple occasions entering a business named "Holbrook Auto Service," located at 1350 Lincoln Avenue, Holbrook New York, and witnessed him wearing, on one occasion, a t-shirt with "Holbrook Auto Service" printed on it. During a surveillance conducted on July 28, 2017, Ermmarino confronted the OIG investigators and stated to them, in part, that his shoulder and arm were injured and that he was in rehab and could stay in business.

According to the NYS Department of State, Division of Corporations website, Holbrook Auto Service, Inc. has been registered as a domestic business corporation since November 19, 2009, with Ermmarino listed as both the Chief Executive and Principal Executive Officers.

OIG staff interviewed Ermmarino who stated that he founded Holbrook Auto Service in 1999, has owned it since that time, and employs one part-time and one full-time employee. Ermmarino further stated that he has worked at the business repairing vehicles from its inception until his shoulder injury. Initially he claimed that he did not "work" at the shop once he was injured, but later conceded that his non-physical labor consisting of "doing paperwork, answering the telephone and dealing with customers" was also considered "work." Ermmarino admitted that he never submitted a dual employment application, and claimed he did not know that he needed permission to have outside employment.

Approximately three weeks after his OIG interview, on November 9, 2017, Ermmarino submitted a Dual Employment/Outside Activities Approval form (MNR dual employment form) to MNR in which he falsely denied that his position was safety sensitive. He further claimed in the MNR dual employment form that the commute time from his outside employment in Holbrook, New York (located in Suffolk County) to his MNR job in Stamford, Connecticut was only 45 minutes.¹ Ermmarino also stated that his MNR hours of work were Monday, Tuesday and Wednesday from 4:00 p.m. to midnight and Saturday 12:00 a.m. to 8:00 p.m. The section listing the hours to be worked at the outside employment appears to have been cut off when the form was sent by facsimile prior to being submitted to MNR. Ermmarino signed the certification in his MNR dual employment form which stated that "providing false or misleading information on this form may lead to disciplinary action, up to and including dismissal."

¹ Using Google Maps, OIG staff determined the driving distance between Holbrook Auto Service and Ermmarino's MNR worksite in Stamford, Connecticut, is approximately 70 to 76 miles, depending upon the route taken.

On December 7, 2017, Ermmarino's department head, MNR Chief Mechanical Officer Michael Yeager, denied the request and noted that the stated commute time was "impossible."

It should be noted that OIG staff obtained an MTA All-Agency Outside Activity Approval Request form (not utilized by MNR) that Ermmarino had submitted to MNR a week before he submitted the MNR dual employment form, in which he had stated that his outside employment hours would be Monday to Friday, 8:00 a.m. to 5:00 p.m., which would have conflicted with his scheduled MNR shifts on Monday, Tuesday and Wednesday.

OIG investigators also reviewed Ermmarino's MNR application for employment dated July 5, 2013. In the application he stated that he was a "supervisor" at Holbrook Auto Service from February 1999 until the date of the application, and that his supervisor was Jennifer Ciralli. He described his work experience as "Customer relations, working on diesel & gas engines, machinist work, boring, honing, lathes, computer diagnostics." Neither the application nor the resume Ermmarino submitted to MNR disclosed that he owned Holbrook Auto Service. Ermmarino signed the certification in his employment application that stated "the information in this application [wa]s correct to the best of [his] knowledge and underst[ood] that the falsification of this information is grounds for ... immediate dismissal." Ermmarino admitted to OIG during his interview that Ciralli was not his supervisor, but rather his office manager.

On March 6, 2018, OIG investigators conducted a follow-up visit to Holbrook Auto Service and found Ermmarino at work, despite Yeager's December 7, 2017 denial of his application for dual employment. Ermmarino claimed to investigators that he believed his application had been approved. Ermmarino told OIG investigators that he had put the business up for sale and listed it on Craig's List on February 28, 2018. Ermmarino stated that it was "too much work running a business and working for MNR."

MTA and MNR POLICIES

MTA All-Agency Code of Ethics

MTA All-Agency Code of Ethics Section 4.07 (Other Employment and Outside Activities) prohibits unauthorized outside employment: "Employees are prohibited from outside employment, business, professional, 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. Employees who wish to engage in outside employment/activities must consult with their Agency's Human Resources Department or Ethics Officer or Ethics Committee to determine what dual employment or outside activity policy exists at the employing Agency."

MNR Corporate Operating Procedures

MNR Operating Procedure 21-029 (Dual Employment and Outside Activities) prohibits all MNR employees from engaging in outside employment without authorization:

For new hires, Section VI(1)(a) states that if a new hire wishes to continue non-MNR employment, “they must file the Form [the Dual Employment/Outside Activities Approval Form] prior to commencing employment with MNR. If the request is denied, the prospective employee must terminate the outside employment within one week of notification and provide proof of termination to the HR Department.”

For existing employees, Section VI(1)(b) states that “Any current employee who wishes to accept outside employment must complete the Form and submit it to his/her Department Head. Employees may not commence outside employment without first submitting the Form and obtaining advance authorization. Failure to do so may result in disciplinary action, up to and including dismissal.”

The policy further states in Section V(3) that “all employees must avoid outside employment and/or outside activities that compromise their ability to do their jobs safely. This is especially important for employees deemed ‘safety-sensitive’ by MNR.”

FINDINGS

1. Ermmarino owned Holbrook Auto Service and worked at that business during his entire employment at MNR without authorization, both before and after his workplace injury, in violation of MTA All-Agency Code of Ethics Section 4.07 and MNR Operating Procedure 21-029.
2. Ermmarino continued to work at Holbrook Auto Service after his dual employment application had been denied, in violation of MTA All-Agency Code of Ethics Section 4.07 and MNR Operating Procedure 21-029.
3. Ermmarino signed the certification in his Dual Employment/Outside Activities Approval Form that stated “providing false or misleading information on this form may lead to disciplinary action, up to and including dismissal.”
4. Ermmarino provided false information in his Dual Employment/Outside Activities Approval Form in that:
 - a. he stated that his position was not safety sensitive
 - b. he stated that his commute time from his outside employment in Holbrook, New York to his MNR job in Stamford, Connecticut was only 45 minutes.

5. Ermmarino signed the certification in his employment application that stated “the information in this application [wa]s correct to the best of [his] knowledge and underst[ood] that the falsification of this information is grounds for ... immediate dismissal.”
6. Ermmarino provided false information in his employment application, in that he:
 - a. omitted the fact that he was the owner of Holbrook Auto Service, Inc.
 - b. minimized his position by stating he was only a “supervisor”
 - c. claimed that his office manager was his supervisor
 - d. attached a resume which omitted the fact that he was the owner of Holbrook Auto Service.

RECOMMENDATION

MNR should impose discipline on Ermmarino as it deems appropriate, 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 Monica J. Hickey-Martin (212) 878-0081.

Very truly yours,



Barry L. Kluger