



Barry L. Kluger
Inspector General

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

October 4, 2018

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

**Re: Unauthorized Dual Employment and
Abuse of Time
MTA/OIG #2018-50**

Dear Mr. Byford:

The Office of the MTA Inspector General (OIG) has concluded its investigation into an allegation that Juan Hernandez (Hernandez), Elevator, Escalator Maintainer (EEM), New York City Transit (NYC Transit) was working for two New York City agencies at the same time. Although we did not substantiate that allegation, we did find that Hernandez engaged in unauthorized dual employment with a private company and improperly used NYC Transit sick leave for that purpose. We recommend that NYC Transit impose discipline as it deems appropriate, up to and including termination.

BACKGROUND

Hernandez joined NYC Transit on February 14, 2009, as a Transit Electro Mechanic Maintainer.¹ His job duties include inspecting, repairing and maintaining elevators and escalators within the NYC Transit system. His work location is Sutphin Boulevard Station, Zone 4, in Queens. Hernandez's work tour is from 10 p.m. to 6 a.m. Tuesday through Saturday with Sundays and Mondays as his regular days off. Hernandez is licensed by the New York City Department of Buildings (DOB) as an elevator inspector.

INVESTIGATION

During the investigation, OIG staff learned that Hernandez was also employed by [REDACTED] since 2016. According to [REDACTED] Hernandez was hired in October 2016, on a part-time basis. Although Hernandez worked various days per week,

¹ In 2017, NYC Transit changed the title of Hernandez's position from "Transit Electro Mechanic Maintainer" to "Elevator, Escalator Maintainer"

he did not work on weekends. According to a W-2 form issued by [REDACTED], Hernandez earned approximately \$36,050 in 2017. Although the MTA All-Agency Code of Ethics and NYC Transit policies required Hernandez to obtain authorization prior to engaging in outside employment, Hernandez did not apply for such authorization until approximately one year after he began working for [REDACTED] and never received an approval from NYC Transit.

OIG staff obtained from [REDACTED] and the New York City Department of Buildings (DOB) a number of [REDACTED] Elevator Inspection/Test Reports that were filed with DOB. The DOB filings included a statement, which is required to be signed by either the inspector or a representative from the inspecting company that the inspection occurred.

[REDACTED] also provided their Payroll Summary Report (Payroll Report) from October 14, 2016 through August 25, 2017. The Payroll Report included dates that payroll checks were issued, the amounts and the number of work hours per week, but did not reflect the actual times that Hernandez reported to work or left work. According to [REDACTED], [REDACTED] issues payroll checks every Friday for the previous week's work and payroll is based on *days* worked, not on an hourly basis. Their payroll system automatically generates paychecks based on the number of days worked per week and attributes eight hours of work for each work day regardless of the actual hours worked. For example, if Hernandez worked one day out of the week, the Payroll Report would reflect that he worked 8 hours even if he actually only worked 3 hours; if he worked two days, it would reflect he worked 16 hours. Since Hernandez did not work on weekends, if the Payroll Report indicates he worked 40 hours, he was paid for working all 5 weekdays for that week. According to [REDACTED] uses the DOB filings as verification that their employee worked specific dates. If an employee cannot work on a date they are scheduled to work, the employee is required to call the office and the work is assigned to someone else. Since their payroll is based on days actually worked, if an employee fails to show up on a given day, the employee is not paid for that day. [REDACTED] stated that his "client is certain the payroll records are accurate" and if the Payroll Report indicates Hernandez was "paid for working during a specific week, he did indeed work that week."

OIG's review of NYC Transit time and attendance records, [REDACTED] Payroll Reports and [REDACTED] DOB filings revealed that Hernandez was paid for improperly working for [REDACTED] on multiple dates that he reported sick to NYC Transit, including the below instances:

1. From October 17, 2016, through and including October 21, 2016, Hernandez was paid for working all five days for [REDACTED], and used NYC Transit sick leave on four of those dates: October 17, 18, 19 and 21.
2. From October 24, 2016, through and including October 28, 2016, Hernandez used NYC Transit sick leave for all five days, and was paid for working for [REDACTED] on four days during that week.

3. From October 31, 2016, through and including November 4, 2016, Hernandez used NYC Transit sick leave for all five days, and was paid for working for [REDACTED] on four days during that week.
4. From December 19, 2016, through and including December 23, 2016, Hernandez was paid for working all five days for [REDACTED] and used NYC Transit sick leave on December 21.
5. From May 10, 2017, through and including May 20, 2017, Hernandez used NYC Transit sick leave, and was paid for working for [REDACTED] six of those dates: May 11, 12, 15, 16, 17 and 18.

OIG staff interviewed Hernandez concerning his outside employment. Hernandez admitted that he only submitted a Dual Employment/Outside Activity Form (dual employment application) about one year after he had already started working for [REDACTED] and that he never received dual employment approval from NYC Transit. He claimed he did not file a dual employment application prior to starting work for [REDACTED] because he did not know he was required to do so at the time.

Hernandez was shown copies of two dual employment applications that he had completed and signed on February 17, 2009 and December 16, 2010, approximately six years prior to his employment with [REDACTED]. Notably, both applications, at the top of page one, included Section 1, Information and Instructions, which instructions begin with the following statement:

“Any employee desiring employment outside of NYC Transit should complete this form and obtain approval from their department **before** engaging in any occupation, business or profession, including self-employment, outside the MTA.” (emphasis in original)

Hernandez acknowledged his signatures on the applications but, contrary to the above language appearing on each form which shows that he should have known he needed to obtain approval, he claimed he did not read the applications when he completed them.² He stated the February 2009 application was given to him when he was hired, and the December 2010 application was given to him when he put in for his first schedule “pick” at the union office. He maintained he did not know he was required to obtain approval before engaging in outside employment.

Hernandez also stated he was given the dual employment application again when he put in for his most recent “pick” at the union office in October 2017. Hernandez stated he completed the application to reflect that he did in fact have outside employment as an Elevator and Escalator Inspector and gave the application to his supervisor Edwin Martinez, who forwarded it to his

² Hernandez presumably completed these two forms accurately at a time when he did not have any outside employment in contrast to his false submissions after he began working for [REDACTED]

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own supervisor. Hernandez provided OIG staff with a copy of his Dual Employment/Outside Activity Form dated October 16, 2017. Hernandez also gave OIG staff a copy of an email which appears to show Martinez forwarded that application to General Superintendent Christopher Leone, Superintendent Joseph Curry, and Deputy Superintendent Deon Shaffee on October 17, 2017, with subject line "Tem Hernandez # 387033 Dual employment." However, Hernandez acknowledged that he never received a response to this application and never received NYC Transit approval for outside employment.

Hernandez denied working for [REDACTED] on days that he used NYC Transit sick leave. When shown copies of [REDACTED]'s Payroll Report, he stated the Payroll Report was inaccurate. According to Hernandez, [REDACTED] would give him a work schedule, which he is permitted to switch around. Hernandez claimed that when he needed to change his schedule, he would call [REDACTED] and tell them he couldn't work the scheduled days, and claimed [REDACTED] would give him different days to work to make up for the missed work days. According to Hernandez, if he made up the missed days, [REDACTED] would keep his payroll as originally scheduled and would not update the information.

While Hernandez' assertion may have been believable for the occasional unanticipated sick day, in this case the records show that in a period of three consecutive work weeks in October/November 2016, and for a ten day stretch in May 2017, Hernandez was on paid sick leave for NYC Transit and was also paid by [REDACTED] on 20 days. Quite simply Hernandez' claims strain credulity.

MTA and NYC Transit Policies

MTA All-Agency Code of Ethics

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

Employees are prohibited from outside employment . . . that interferes or is in conflict with the proper and effective discharge of the individual's official duties and 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 . . . they do not use any MTA Agency resources (e.g., time, equipment, telephone, etc.) in connection with such Employment . . . 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.

MTA All-Agency Policy Directive

MTA All-Agency Policy Directive Sick Leave, Policy Number 11-014, Section V, Usage (1) states, in pertinent part, the following under Usage:

Sick leave may be used for illnesses or the provision of medically related care to: the employee, the employee's family members, the employee's Domestic Partner or the Domestic Partner's family members.

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 (A) (9): "While on sick leave from the Authority, employees may not work for another employer without express written authorization from the Authority."

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

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

FINDINGS

1. Hernandez engaged in outside employment during at least six separate weekly periods, while using NYC Transit sick leave without express authorization, in violation of NYC Transit Policy Instruction Number 4.23.2, Section IV, Guidelines (A) (9) and MTA All-Agency Policy Directive Sick Leave, Policy Number 11-014.
2. Hernandez 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 Number 4.23.2.

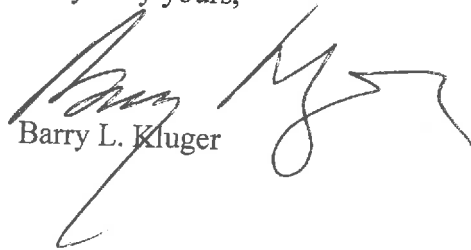
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RECOMMENDATION

We recommend that NYC Transit impose discipline on Hernandez 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 Deputy Inspector General Demetri M. Jones at (212) 878-0279.

Very truly yours,



Barry L. Kluger

Cc: Kim Moore-Ward, Vice President
Office of Labor Relations, NYC Transit