



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

March 13, 2019

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

**Re: Dual Employment and
Abuse of Time by
Deputy Superintendent
MTA/OIG #2019-05**

Dear Mr. Byford:

The Office of the MTA Inspector General (OIG) has completed its investigation into allegations that Gustavo Espinal (Espinal), Deputy Superintendent, New York City Transit (NYC Transit) Central Electronics Shop (CES), was hired improperly and operated a personal business during NYC Transit work hours. While we did not find any impropriety in Espinal's hiring, we substantiated the allegation that Espinal operated a personal business during his NYC Transit work hours. We recommend that NYC Transit impose discipline on Espinal as it deems appropriate, up to and including termination. Based on our finding that Espinal's conduct also appears to violate New York State Public Officers Law, we are forwarding this matter to the New York State Joint Commission on Public Ethics (JCOPE), in accordance with its jurisdiction, for such action as it may deem appropriate.

INVESTIGATION

Espinal was hired by NYC Transit on April 7, 2008, as a Revenue Equipment Maintainer. In 2016 he was promoted to Deputy Superintendent at CES. In that position, Espinal supervised eight employees in the Shipping and Receiving Department and approximately sixty employees on the shop floor. Espinal was required to file an Annual Statement of Financial Disclosure (disclosure form) with JCOPE and to include details concerning his outside business because he was designated as a policy maker and his salary by 2016 exceeded JCOPE's salary limit for not filing.

OIG staff reviewed Espinal's employment records, spoke with NYC Transit management, and determined that Espinal had never received dual employment authorization. We also learned that Espinal denied being self-employed and denied that he had employment outside of NYC Transit on his JCOPE disclosure form. OIG staff also reviewed records of Espinal's personal cell phone

usage during his work hours which established numerous instances where Espinal spent 20 minutes to more than an hour on his personal phone during his NYC Transit work hours.

Interviews

On April 23, 2018, OIG staff interviewed Espinal. Espinal stated that he owned and operated an electronic repair business under the names “Megatronics” and/or “Mega Repair” (collectively Mega). Mega’s main business was with a Brazilian company, known as “Taramps.” Espinal provided services for Taramps’ United States-based customers. Taramps specialized in motor vehicle audio systems and equipment. Espinal and Mega are identified on various web sites as one of three authorized Taramps repair centers in the United States.

Espinal stated that there were no written agreements with Taramps and that he never met anyone from Taramps face to face; all work was done via price lists and Taramps simply directed customers to use Mega’s services. Espinal stated that Taramps provided all of the parts and manifests for the work he did for Taramps, and that he never performed work for NYC Transit or any MTA agencies or personnel.

Espinal admitted that he used his personal cell phone for calls related to Mega. Espinal estimated that Mega earned approximately \$5,000 to \$10,000 a year, but claimed Mega had mostly been operating “in the red” with 2018 the first year it has been “in the green.” Espinal described Mega as his hobby.

When OIG staff asked Espinal why he responded “No” to question number 13 on his 2016 disclosure form (for calendar year 2015) about whether he was self-employed or employed outside of NYC Transit, Espinal claimed that if he responded “No,” it was an “honest mistake” because, he claimed, he had disengaged from Mega, as his wife and son were doing most of Mega’s work.

When asked how many hours a week he worked for Mega, Espinal claimed he worked “six to seven hours a week,” “two hours a night” and “most Friday and weekends.” However, it should be noted that in Espinal’s 2013 NYC Transit promotion application, Espinal listed that before joining NYC Transit he had previously been working 40 hours per week at Mega in 2008.

Espinal also claimed that he had submitted an application for dual employment that was approved. Espinal offered to provide OIG staff a copy of the approval but never produced it. Further, although NYC Transit had copies of Espinal’s applications for outside employment for 2008 and 2012, neither had ever been approved, as was required before Espinal could have engaged in any outside employment. In fact, Espinal did not list Mega or any other specific company in those applications. For the “Outside Activity” he merely wrote “Electronic Technician” with the telephone number and address for Mega. For “Type of Business” he wrote

“Electronic Repair” and for “Position” he wrote “Technician.” It also bears noting that, in Espinal’s 2012 application he indicated his outside activity would consist of 20 hours per week. According to Espinal, most of his Mega work was repairing and shipping car stereo amplifiers and parts. Espinal said that Mega does not have a bank account, but rather uses the PayPal online payment service for parts, equipment, shipping, and also to pay profits to Espinal’s wife. Espinal said that his daughter created Mega’s social media pages, but claimed that he had only seen the pages maybe five times.

OIG staff questioned Espinal in more detail about his admitted personal phone conversations at his NYC Transit work site and during NYC Transit work time. When asked to explain the amount of time spent on telephone calls not related to NYC Transit business during work hours, Espinal initially claimed that the calls were mostly very short calls to family and friends, but eventually admitted that sometimes the calls were excessive. When asked about his conversations with an individual known as “Primo,” and discussions of house prices, an insurance claim, and delivery of money and ball bearings, Espinal said that Primo is his cousin who lives in the Dominican Republic. According to Espinal, Primo had helped Espinal manage a family bakery in the Dominican Republic and the other conversations involved other personal and family business.

OIG interviewed other CES staff all of whom who consistently characterized Espinal’s personal cell phone usage during work hours as excessive. It was also reported that Espinal often would leave his work area to engage in personal phone calls, and at times, could not be found when he was needed. It should be noted that as of November 2018, CES personnel advised OIG staff that Espinal was still using his cell phone excessively, and is still leaving his work area to engage in personal calls.

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:

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 . . .

Employees may engage in outside employment/activity provided that (1) such employment/activity does not interfere with their ability to devote appropriate time and attention to their employment with their MTA Agency; (2) such employment/activity does not violate the specific guidelines for other employment set by their MTA agency; (3) they do not use any MTA Agency resources (e.g., time, equipment, telephone, etc.) in connection with such employment; and (4) they obtain the required approvals as set forth

in the specific procedures for approval of other employment set by their MTA Agency
(emphasis added)

NYC Transit Rules & Regulations

NYC Transit Rules and Regulations, Rule 4(g) states, in pertinent part:

All employees must obtain Authority approval before engaging in any occupation, business or profession, including self-employment, outside the Authority. A request for approval must include written notification to their Division Heads specifying the proposed activities, the name, address and telephone number of the place of proposed employment, the date upon which they plan to commence additional employment, the days of the week and the hours during which they will be employed and the duties they will perform. Any change in any of this information, once the additional employment has commenced, must be provided in the same manner of notification. (emphasis added)

NYC Transit Rules and Regulations, Rule 11(e) states, in pertinent part:

Employees must give their full and undivided attention to the proper performance of their duties; they must not neglect or shirk any duty. The use of cellular phones or accessories, portable electronic devices, portable digital assistants (PDAs), portable music players, pagers, ear plugs, earphones or any other similar and evolving devices which may distract or impair an employee's attention is forbidden, except where authorized.

NYC Transit Rules and Regulations, Rule 11(u) states, in pertinent part:

Employees are strictly prohibited from owning, operating or working for any private business ... on Authority property, except as authorized in accordance with Authority policy.

NYC Transit Policy Instruction Manual

NYC Transit's Policy/Instruction No. 4.23.2 states, in pertinent part:

IV. GUIDELINES

A. For all employees:

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.

2. The dual employment shall not create a conflict of interest or an appearance of a conflict in the performance of the employee's employment with the Authority.
3. A current employee may not commence a secondary job until his/her dual employment request has been approved in writing. (emphasis added)
5. The proposed outside employment: a) may not make use of Authority time, resources, facilities, or equipment. (emphasis added)

VI. ADMINISTRATION AND RESPONSIBILITIES

B. Employee:

1. All current employees must obtain the Authority's approval in writing, on the prescribed application form, before engaging in any occupation, business or profession, including self-employment, outside the Authority. (emphasis original)
6. 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 added)

NYC Transit's Ethics Policy Instruction No. 5.6.4, §3.07, Dual Employment (issued May 11, 1999) states, in pertinent part:

The Authority requires that employees devote appropriate time and attention to their employment with the Authority. Employees are prohibited from employment, [b]usiness, professional or other outside activity which interferes or is in conflict with the proper and effective discharge of the individual's official duties or responsibilities. Employees may engage in other employment in certain limited circumstances, subject to approval.

Espinal failed to obtain NYC Transit's prior approval for his dual employment before working his dual employment. OIG's investigation also revealed that Espinal's outside activity may have significantly interfered with his NYC Transit work time.

FINDINGS

1. Espinal failed to obtain dual employment approval prior to engaging in his private business, in violation of MTA All-Agency Code of Ethics, Section 4.07, NYC Transit Rule 4(g), NYC Transit Policy/Instruction Number 4.23.2, and NYC Transit Ethics Policy Instruction No. 5.6.4, §3.07.

Andrew Byford
MTA/OIG #2019-05
March 13, 2019
Page 6

2. Espinal abused time in that he engaged in excessive personal phone calls and outside activity during his NYC Transit work hours, in violation of MTA All-Agency Code of Ethics, Section 4.07, NYC Transit Rules 11(e) and 11(u), NYC Transit Policy/Instruction Number 4.23.2, and NYC Transit Ethics Policy Instruction No. 5.6.4, §3.07.

RECOMMENDATION

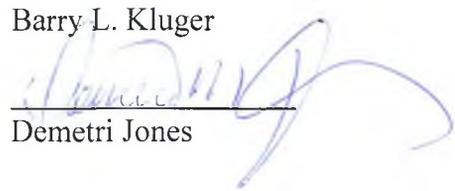
NYC Transit should impose discipline on Espinal as it deems appropriate, up to and including termination.

As always, we appreciate your continued courtesy and cooperation. Please provide me with the agency response to our recommendation within thirty days of receipt of this letter. 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

By:


Demetri Jones

Cc: Kim Moore-Ward, V.P. Labor Relations