



Carolyn Pokorny
MTA Inspector General

Office of the Inspector General
Metropolitan Transportation Authority
One Penn Plaza, 11th Floor, Suite 1110
New York, NY 10119
212-878-0000

March 10, 2020

Sarah E. Feinberg
Interim President
MTA New York City Transit
2 Broadway, 30th Floor
New York, NY 10004

**Re: Unauthorized Dual Employment
(NYC Transit Signal Maintainer)
MTA/OIG #2020-08**

Dear Ms. Feinberg:

The Office of the MTA Inspector General (OIG) has substantiated allegations that a New York City Transit (NYC Transit) Signal Maintainer engaged in unauthorized dual employment with the National Railroad Passenger Corporation/Amtrak (Amtrak). The Signal Maintainer was working full-time for Amtrak before he accepted a position with NYC Transit—but instead of quitting his Amtrak job, he continued to work at both agencies for over 20 months. OIG found at least 60 separate instances where both NYC Transit and Amtrak paid the Signal Maintainer for work he purportedly did for both agencies on the same date and time. *See Exhibit A, attached.* In addition to such time theft, he: (1) falsely reported to NYC Transit that he was not working for any other government agency when in fact he was working for Amtrak; (2) violated NYC Transit's hours of rest restrictions for his safety-sensitive position by working the two jobs; and (3) failed to disclose his employment with Amtrak in NYC Transit forms.

We recommend that NYC Transit impose discipline on the Signal Maintainer as it deems appropriate, up to and including termination. We also recommend that that NYC Transit review his time and attendance records to recoup any payments NYC Transit made that he was not entitled to receive.

I. BACKGROUND

On February 7, 2011, Amtrak hired the Signal Maintainer as a Service Engineer. On June 24, 2013, NYC Transit hired him as a provisional Transit Electrical Helper and on June 23, 2014, he became a permanent NYC Transit employee. On December 13, 2015, NYC Transit promoted him to Signal Maintainer Trainee and on June 12, 2017, promoted him to a Signal Maintainer, a safety-sensitive position. The Signal Maintainer's shift was midnight to 8:00 a.m.

with Sundays and Mondays as his regular days off. On December 20, 2018, the Signal Maintainer resigned from his Amtrak position immediately after his interview with the OIG.

The duties and responsibilities of a Signal Maintainer include maintaining, installing, inspecting, testing, and repairing signals for the subway system. Signal maintainers work along the tracks and right of way and their work is critical to the safe movement of trains. These employees are required to have 8 consecutive non-working hours in the 16-hour period before reporting to work to ensure adequate rest for their own safety as well as the safety of their coworkers and the public.

II. INVESTIGATION

A. Record Review

1. *Dual employment disclosure*

On May 30, 2013, as a part of his onboarding paperwork with the MTA, the Signal Maintainer submitted a Dual Employment/Outside Activity form (Dual Employment form) and a Comprehensive Personnel Document (2013 CPD). He also signed an acknowledgement that he received NYC Transit's Dual Employment policy. The Signal Maintainer disclosed his Amtrak job on both the 2013 Dual Employment form and 2013 CPD and acknowledged that he was continuing employment with another governmental agency. According to NYC Operations Training department policies at that time, it was the employee's responsibility to submit his outside activity form to the department he was assigned to, which he did not. While the Training Department kept a complete package of all documents the employee had completed, they did not forward it for anyone's approval. Subsequently, in 2016, the Training Department changed its policy and now forwards a copy of the dual employment form to the employee's department.

When the Signal Maintainer was first promoted in 2014, he reported in his Update Personnel Document (2014 UPD), that he was not continuing employment with another governmental agency. For his next promotion in 2015, he again reported in his Update Personnel Document (2015 UPD), that he was not continuing employment with another governmental agency. The Signal Maintainer failed to disclose his employment with Amtrak in these updated forms.

2. *Time and attendance records*

A comparison of the Signal Maintainer's NYC Transit and Amtrak time sheets from April 1, 2016 to January 31, 2018, revealed that on 60 occasions¹, his NYC Transit and Amtrak shifts overlapped and on 262 occasions, he violated NYC Transit's hours of rest rules.

For example, on December 15, 2017, the Signal Maintainer worked at NYC Transit from 1:00 a.m. to 5:00 p.m. and at Amtrak from 3:00 p.m. to 11:00 p.m. There is an overlap of 2

¹ A complete chart of the overlap is attached as Exhibit A.

hours from 3pm to 5pm. On the next day, December 16, 2017, he worked at NYC Transit from 1:00 a.m. to 7:00 p.m. and at Amtrak from 3:00 p.m. to 11:00 p.m., resulting in an overlap of 4 hours (3 p.m. to 7 p.m.). As a result, between these two days, he also violated NYC Transit's hours of rest rules as he did not have 8 hours of rest before his next NYC Transit shift.

In another example, records for the week of January 23, 2018, showed that the Signal Maintainer's work hours was in flagrant violation of the hours of rest rules. The Signal Maintainer reported that he worked 109 hours over a 5-day (120-hour) period for both agencies. On each work day, the Signal Maintainer worked a full 8-hour shift for NYC Transit, plus overtime hours (ranging from 2 hours to 8 hours) that were immediately followed by an Amtrak shift. For that week, pursuant to the hours of rest rules, the Signal Maintainer could only have worked a total of 69 hours.

On one occasion, on April 13, 2016, the Signal Maintainer worked for Amtrak while he was on NYC Transit sick leave.

B. OIG's Interviews of NYC Transit Employees

1. The Amtrak Supervisor

The Signal Maintainer's Amtrak supervisor was a remote manager physically located in Boston, Massachusetts. He supervised 18 engineers, 6 of whom were located in New York City, including the Signal Maintainer. The Amtrak supervisor stated that the Signal Maintainer's title was Service Engineer and he was responsible for diagnosing problems with the high-speed trains; provided technical support to employees who made repairs; and worked the 3:00 p.m. to 11:00 p.m. shift, Tuesday through Saturday, at the Amtrak facility located at Sunnyside Yards in Queens, New York (Sunnyside Yard).

The Amtrak supervisor did not know the Signal Maintainer worked for NYC Transit and did not authorize the Signal Maintainer to work for NYC Transit. According to the Amtrak Supervisor, the Signal Maintainer's Amtrak position was not a safety-sensitive position and did not have any mandatory rest requirements. The Amtrak supervisor confirmed that the Signal Maintainer submitted Amtrak's annual Certification of Compliance form in which the Signal Maintainer falsely certified that he had no outside employment. Amtrak did not seek discipline against the Signal Maintainer when it found out about the dual employment because the Signal Maintainer resigned.

2. NYC Transit Supervisor

The Signal Maintainer's supervisor at NYC Transit did not know that the Signal Maintainer had outside employment with Amtrak. The supervisor stated that he worked at a different location from the Signal Maintainer and communicated with the Signal Maintainer mostly by phone or radio, and therefore, would not have known that the Signal Maintainer left early for his Amtrak job.

3. *The Signal Maintainer*

The Signal Maintainer admitted he had worked for both Amtrak and NYC Transit for over 5 years, between June 2013 to December 2018. He also admitted that he worked at least 40 hours per week for both employers. He admitted that he did not have NYC Transit approval for outside employment. The Signal Maintainer initially denied that he ever completed an NYC Transit application for dual employment. He later admitted that he had in fact completed an application with his initial employment paperwork, but claimed he never received a response from the agency. However, he never followed up or asked about the status of the application.

The Signal Maintainer acknowledged that his position at NYC Transit position was safety-sensitive, but claimed that only meant he could not have any drugs or alcohol in his system while at work and claimed that he was unaware about the hours of rest rules. The Signal Maintainer further admitted that he had used NYC Transit sick leave on 1 day he worked for Amtrak.

III. POLICIES AND ANALYSIS

A. MTA All-Agency Code of Ethics

1. *§ 4.02: Public Trust*

Section 4.02 states, in pertinent part, that employees shall not engage in a course of conduct that will raise suspicion among the public that they are likely to be engaged in acts that are in violation of the public trust. Further, employees shall avoid even the appearance that they can be improperly influenced in the performance of their official duties or induced to violate the public trust or impair their independence of judgment in the exercise of their official duties.

Here, the Signal Maintainer failed to obtain approval for his outside activity and in updated filings, failed to report his outside activity. His conduct raises suspicion among the public that he is engaged in acts that are a violation of the public trust.

2. *§ 4.07: Other Employment and Outside Activities*

Section 4.07 states, in pertinent part, that employees may engage in outside employment/activity provided that (1) such employment/activity does not violate the specific guidelines for other employment set by their MTA Agency; and (2) they obtain the required approvals as set forth in the specific procedures for approval of other employment set by their MTA Agency.

Here, the Signal Maintainer failed to obtain approval for his employment with Amtrak.

B. NYC Transit Rules and Regulations and Policy/Instruction

1. Rule 4(g): General Duties and Obligation of Employees

Rule 4(g) states, in pertinent part, that all employees must obtain Authority approval before engaging in any occupation, business or professions, including self-employment, outside the Authority.

Here, like above, the Signal Maintainer he failed to obtain approval for his employment with Amtrak.

2. Rule 5(a): Reporting to Duty and Rule 8(a): Reports by Employees

Rule 5(a) states, in pertinent part, that absence from duty without proper authority is regarded by the Authority as willful neglect of duty and as a serious breach of discipline. “All leaves of absence for personal business must be approved in advance... Sick leave, whether with or without pay, will be granted only upon proper evidence that the employee was actually ill and unable to perform his/her duties during the period of the absence.” Rule 8(a) states, in pertinent part, that written reports must be complete and accurate. Employees who knowingly submit or make reports containing false statements shall be charged with misconduct and incompetence.

Here, the Signal Maintainer, on 60 occasions, reported that he was working at NYC Transit while he was working at Amtrak. In addition, on April 13, 2016, the Signal Maintainer worked for Amtrak and falsely reported to NYC Transit that he was sick.

3. Rule 10(a): Conduct of Employees

Rule 10(a), states, in pertinent part, that employees are required to avoid behavior which would tend to create adverse criticism of the Authority or of the System. Their conduct, whether on or off duty on System property, is required to be such as to merit the confidence and respect of the public and their superiors.

4. Policy/Instructions Number 4.23.2

The NYC Transit Policy/Instructions Section (A)(1) states that any 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 (A)(4) states, in pertinent part, that a new hire who wishes to continue other employment must file a dual employment request prior to his/her appointment date and if the request is subsequently denied, the employee is required to terminate the outside employment within 2 days of the receiving notice of the determination. In regards to use of sick leave, Section (A)(9) states that employees may not work for another employer while on sick leave from the Authority without express written authorization from the Authority. Section (B)(1) regarding employees in safety-sensitive titles, provides, in pertinent part, that the proposed outside employment may not result in total, combined work time that prevents the employee from having 8 consecutive non-working hours in the 16-hour period before reporting to work for the Authority.

Furthermore, Section VI of NYC Transit Policy/Instruction Number 4.23.2 for Dual Employment reiterates that a new hire who wishes to continue other employment must file a dual employment request prior to his/her appointment date. If the department subsequently denies the request, the employee will be required to terminate the outside employment within 2 days of receiving notice of the determination. Section VI further provides that 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.

Here, the Signal Maintainer violated these policies when he failed to obtain dual employment for approval prior to and during his appointment to NYC Transit. Although the Signal Maintainer continued to be employed by Amtrak when he was hired, he never submitted a request for approval. He further failed to disclose his outside activity in his updated filings. More importantly, his safety sensitive position required him to have 8 consecutive non-working hours in the 16-hour period, which he violated over 262 times.

C. New York State Public Officers Law § 74(3)(h)

New York State Public Officers Law § 74(3)(h) states, in pertinent part, that “an officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he or she is likely to be engaged in acts that are in violation of his or her trust.”

Here, for the same reasons as stated above, the Signal Maintainer engaged in acts that violated his trust.

IV. FINDINGS

1. The Signal Maintainer, between April 15, 2016 to January 30, 2018, on 60 separate occasions, stole a total of 116 hours from NYC Transit, when he left his employment during NYC Transit hours to go to work for Amtrak, in violation of MTA All-Agency Code of Ethics §§ 4.02 and 4.07, NYC Transit Rules 5(a), 8(a), and 10(a) and NYC Transit Policy Instruction Number 4.23.2, Section IV(A)(9).
2. The Signal Maintainer violated NYC Transit’s hours of rest requirements for his safety-sensitive position while continuing to work for Amtrak on multiple occasions, in violation of NYC Transit Policy Instruction Number 4.23.2, Section IV, Guidelines (B) (1).
3. The Signal Maintainer falsely reported on NYC Transit documents dated August 12, 2014 and December 9, 2015, that he was not employed with another government agency when in fact he continued to work for Amtrak, in violation of NYC Transit Rules 10(a).
4. The Signal Maintainer failed to obtain approval to continue his outside employment with Amtrak, in violation of MTA All-Agency Code of Ethics §§

4.02 and 4.07, NYC Transit Rule 4(g), and NYC Transit Policy Instruction Number 4.23.2.

The Signal Maintainer used NYC Transit sick leave to work for Amtrak, in violation of NYC Transit Rules 5(a), 8(a), and 10(a) and NYC Transit Policy Instruction Number 4.23.2, Section IV(A)(9).

V. RECOMMENDATIONS

1. NYC Transit should impose discipline on the Signal Maintainer, as it deems appropriate, up to and including termination.
2. NYC Transit should recoup any payments made that the Signal Maintainer was not entitled to receive.

As always, we appreciate your continued courtesy and cooperation. Please advise our office within thirty (30) days of any actions you intend to take and the result of any action taken. Should you have any questions, or need additional information, please contact Executive Deputy Inspector General Pei Pei Cheng-de Castro at (212) 878-0072.

Very truly yours,

/s/

Carolyn Pokorny

Attch (Exhibit A)

cc: David Farber, General Counsel, NYC Transit
Kim Moore-Ward, Vice President, Office of Labor Relations, NYC Transit

Exhibit A

Date	NYCTA Start Hour	NYCTA End Time	Amtrak Start Hour	Amtrak End Time	Overlap Time in Hours
4/15/16	12:00 AM	4:00 PM	3:00 PM	11:00 PM	1
4/19/16	12:00 AM	4:00 PM	3:00 PM	11:00 PM	1
4/21/16	12:00 AM	4:00 PM	3:00 PM	11:00 PM	1
7/26/16	6:00 AM	4:40 PM	3:00 PM	11:00 PM	1.4
1/19/17	6:00 AM	3:40 PM	3:00 PM	11:00 PM	0.4
1/21/17	6:00 AM	10:00 PM	3:00 PM	11:00 PM	7
2/2/17	6:00 AM	3:20 PM	3:00 PM	11:00 PM	0.2
2/3/17	12:00 AM	3:20 PM	3:00 PM	11:00 PM	0.2
2/9/17	6:00 AM	10:00 PM	3:00 PM	11:00 PM	7
2/10/17	6:00 AM	6:00 PM	3:00 PM	11:00 PM	3
2/14/17	6:00 AM	4:00 PM	3:00 PM	11:00 PM	1
3/25/17	6:00 AM	3:40 PM	3:00 PM	11:00 PM	0.4
4/27/17	6:00 AM	5:20 PM	3:00 PM	11:00 PM	2.2
4/28/17	1:00 AM	6:00 PM	3:00 PM	11:00 PM	3
6/7/17	12:00 AM	3:20 PM	3:00 PM	11:00 PM	0.2
6/8/17	6:00AM	4:00 PM	3:00 PM	11:00 PM	1
6/27/17	6:00 AM	5:00 PM	3:00 PM	11:00 PM	2
7/4/17	7:45 AM	6:00 PM	3:00 PM	11:00 PM	3
8/9/17	6:00 AM	3:20 PM	3:00 PM	11:00 PM	0.2
8/18/17	6:00 AM	3:20 PM	3:00 PM	11:00 PM	0.2
9/8/17	12:00 AM	3:10 PM	3:00 PM	11:00 PM	0.1
9/19/17	12:00 AM	4:00 PM	3:00 PM	11:00 PM	1
9/26/17	12:00 AM	4:00 PM	3:00 PM	11:00 PM	1
9/28/17	12:00 AM	4:00 PM	3:00 PM	11:00 PM	1
10/10/17	12:00 AM	4:00 PM	3:00 PM	11:00 PM	1
10/12/17	12:00 AM	4:00 PM	3:00 PM	11:00 PM	1
10/19/17	12:00 AM	4:00 PM	3:00 PM	11:00 PM	1
11/8/17	12:00 AM	4:00 PM	3:00 PM	11:00 PM	1
11/15/17	12:00 AM	4:00 PM	3:00 PM	11:00 PM	1
11/28/17	8:00 PM	6:00 AM	3:00 PM	11:00 PM	3
11/29/17	8:00 PM	6:00 AM	3:00 PM	11:00 PM	3
11/30/17	8:00 PM	6:00 AM	3:00 PM	11:00 PM	3
12/7/17	7:00 AM	5:00 PM	3:00 PM	11:00 PM	2
12/8/17	7:00 AM	5:00 PM	3:00 PM	11:00 PM	2
12/9/17	6:00 AM	8:20 PM	3:00 PM	11:00 PM	5.2
12/12/17	7:00 AM	5:00 PM	3:00 PM	11:00 PM	2

Date	NYCTA Start Hour	NYCTA End Time	Amtrak Start Hour	Amtrak End Time	Overlap Time in Hours
12/13/17	7:00 AM	5:00 PM	3:00 PM	11:00 PM	2
12/14/17	7:00 AM	5:00 PM	3:00 PM	11:00 PM	2
12/15/17	1:00 AM	5:00 PM	3:00 PM	11:00 PM	2
12/16/17	1:00 AM	7:00 PM	3:00 PM	11:00 PM	4
12/19/17	7:00 AM	5:00 PM	3:00 PM	11:00 PM	2
12/20/17	7:00 AM	5:00 PM	3:00 PM	11:00 PM	2
12/21/17	7:00 AM	5:00 PM	3:00 PM	11:00 PM	2
12/22/17	1:00 AM	5:00 PM	3:00 PM	11:00 PM	2
12/23/17	6:00 AM	6:30 PM	3:00 PM	11:00 PM	3.3
12/26/17	7:00 AM	5:00 PM	3:00 PM	11:00 PM	2
12/27/17	7:00 AM	5:00 PM	3:00 PM	11:00 PM	2
12/28/17	7:00 AM	5:00 PM	3:00 PM	11:00 PM	2
12/29/17	7:00 AM	5:00 PM	3:00 PM	11:00 PM	2
12/30/17	6:00 AM	6:00 PM	3:00 PM	11:00 PM	3
1/16/18	7:00 AM	5:00 PM	3:00 PM	11:00 PM	2
1/17/18	7:00 AM	5:00 PM	3:00 PM	11:00 PM	2
1/18/18	7:00 AM	5:00 PM	3:00 PM	11:00 PM	2
1/19/18	7:00 AM	5:00 PM	3:00 PM	11:00 PM	2
1/23/18	7:00 AM	5:00 PM	3:00 PM	11:00 PM	2
1/24/18	1:00 AM	5:00 PM	3:00 PM	11:00 PM	2
1/25/18	1:00 AM	5:00 PM	3:00 PM	11:00 PM	2
1/26/18	1:00 AM	5:00 PM	3:00 PM	11:00 PM	2
1/27/18	6:00 AM	5:00 PM	3:00 PM	11:00 PM	2
1/30/18	7:00 AM	5:00 PM	3:00 PM	11:00 PM	2
Total Instances Between 4/15/16 - 1/30/18		60	Total Hours of Overlap Between 4/15/16 - 1/30/18		116



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Agency Response
to
MTA/OIG #2020-08

Unauthorized Dual Employment of NYC Transit Signal Maintainer

In March 2020, in response to the Office of the MTA Inspector General's (OIG) investigation and report, New York City Transit (NYC Transit) brought disciplinary charges against the Signal Maintainer. A hearing was held. On July 16, 2020, an arbitrator found that NYC Transit had cause to discipline the Signal Maintainer and assessed a penalty of time-served suspension without back-pay (worth approximately \$27,368) and issued a final warning that if the Signal Maintainer fails to adhere to the rules and regulations governing dual employment in the future, it shall result in his dismissal.