



Carolyn Pokorny
MTA Inspector General

Office of the Inspector General
Metropolitan Transportation Authority
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June 1, 2020

Via Electronic Mail

Phillip Eng
President
MTA Long Island Rail Road
93-02 Sutphin Blvd., 3rd Floor
Jamaica, NY 11435

**Re: LIRR Employee's Time Abuse
(Car Appearance Maintainer)
MTA/OIG #2020-10**

Dear Mr. Eng:

The Office of the MTA Inspector General (OIG) has substantiated allegations that a Long Island Rail Road (LIRR) Car Appearance Maintainer (Car Maintainer), on 14 occasions between January 1, 2018 to September 30, 2019, conducted his volunteer fireman work for the North Babylon Fire Department (Fire Department) during LIRR work hours and on days he was on regular paid sick leave or on leave under the Family and Medical Leave Act (FMLA) with the LIRR. The Car Maintainer did not have dual employment authorization from the LIRR to volunteer at the Fire Department. In addition, on October 24, 2019, during an OIG site visit at the Car Maintainer's work location, the Car Maintainer was observed asleep in his vehicle during his shift. The Car Maintainer has since advised he was retiring after the LIRR filed disciplinary charges against him based on OIG's investigation.

We recommend that the LIRR place this letter in the Car Maintainer's personnel file and recoup any payment made to him for hours he did not work. We also recommend that the LIRR improve its monitoring procedures for car maintainers to ensure that the employees are present at their work locations and performing their duties during work hours. We further recommend that the LIRR improve its record keeping process relating to spot inspections by supervisors to make sure the inspections are accurately and consistently recorded and recorded on a standardized form.

I. BACKGROUND

On October 10, 2005, the Car Maintainer joined the North Babylon Fire Department as a volunteer fireman. He left his voluntary service on August 29, 2007 and returned on March 9, 2009. He is currently a volunteer Captain of Station 2 located in North Babylon.

In February 2015, the employee joined the LIRR as a Car Maintainer. He was assigned to the Babylon Yard located in West Islip, New York, and his work hours were from 12:30 a.m. to 8:30 a.m. Sunday through Thursday. His regular days off were Fridays and Saturdays. The Car Maintainer did not obtain dual employment authorization to be a volunteer fireman. On October 28, 2019, after the OIG observed the employee asleep in his vehicle during work hours, LIRR filed disciplinary charges against him. On October 31, 2019, he submitted his letter of resignation stating he was resigning due to unforeseen circumstances effective November 1, 2019.

II. INVESTIGATION

A. TIME AND ATTENDANCE ABUSE

1. Car Maintainer Responded to Alarms for the Fire Department During Work Hours

According to the Fire Department, they have approximately 191 volunteer fire fighters and they respond to approximately 3,500 calls a year. Every member must respond to 20 calls a month in order to remain in good standing. In order to receive credit for responding to a call, each member must use a fingerprint scan to verify his/her presence. The member needs to scan only one time, either before or after responding to a call. Although most members scan their fingerprint at the fire station, a fingerprint scan can also be done on a portable scanner in the field when members are at training.

An analysis of the Car Maintainer's LIRR time and attendance records and the times he responded to calls for the Fire Department revealed that, from January 1, 2018 to September 30, 2019, the Car Maintainer responded to Fire Department calls during hours he claimed to be at work for the LIRR and on days he was on regular paid sick leave or FMLA leave. Specifically, the Car Maintainer responded to Fire Department calls during work hours on 8 separate dates. He responded to calls when he was on paid regular sick leave once and on FMLA leave 5 times.

The overlapping dates are as follows:

No.	Date	LIRR Time	Fire Dept. Call Time
1.	3/22/2018	Sick – Paid	2:11 a.m.
2.	5/2/2018	12:22 a.m. to 8:32 a.m.	5:47 a.m.
3.	8/26/2018	12:27 a.m. to 8:26 a.m.	3:18 a.m.
4.	9/13/2018	12:29 a.m. to 8:29 a.m.	7:44 a.m. and 8:17 a.m.
5.	9/18/2018	12:27 a.m. to 8:29 a.m.	1:23 a.m.
6.	10/15/2018	12:29 a.m. to 8:32 a.m.	5:31 a.m.
7.	10/21/2018	12:25 a.m. to 8:25 a.m.	4:30 a.m.
8.	5/12/2019	12:16 a.m. to 8:30 a.m.	12:52 a.m.
9.	6/27/2019	FMLA – Sick	7:38 a.m.
10.	7/1/2019	FMLA - Sick	6:33 a.m.
11.	7/15/2019	FMLA – Sick	3:51 a.m.
12.	7/24/2019	12:28 a.m. to 8:20 a.m.	7:49 a.m.
13.	8/18/2019	FMLA - Unpaid	3:38 a.m.
14.	8/26/2019	FMLA - Unpaid	5:35 a.m.

2. *Car Maintainer was Asleep in his Vehicle During Work Hours*

On October 24, 2019, at approximately 3:00 a.m., the OIG conducted a site visit to the Babylon Yard. During the OIG’s canvass of the parking lot, the OIG observed the Car Maintainer asleep in the driver’s seat of his personal vehicle. The OIG notified his supervisor, who removed the Car Maintainer from service.

B. DEFICIENCIES IN RECORD KEEPING

1. *Multiple Versions of the Summary Sheets*

According to the General Manager and Deputy General Manager of Maintenance of Equipment (MOE) Operations for the Babylon Yard, there are generally two supervisors, called Gang Foremen, assigned to the yard per shift. The supervisors conduct spot checks of the employees and perform spot inspections of the train cars to make sure they were cleaned. The spot inspections of the train cars are recorded on the Field Operations Manpower and Summary Sheets (Summary Sheets). The spot inspections of the employees are not recorded.

A review of the Summary Sheets from January 2018 to October 2019 showed that the supervisors were using different versions of the form. The Summary Sheets provided to the OIG included versions with 10 different effective dates¹. There were also 2 versions of the Summary Sheet for the forms with the effective dates of March 4, 2019, May 20, 2019, and September 3, 2019. While most of the versions had a list of train cars assigned to be cleaned and a column

¹ The effective dates included: November 17, 2014, July 10, 2016, November 13, 2016, May 21, 2018, September 5, 2017, July 21, 2018, September 4, 2018, September 5, 2018, January 7, 2019, and July 15, 2019.

marked “Inspected” (for the supervisors to note the train cars that they inspected), a few of the versions were missing the “Inspected” column.

2. Lack of Detail and Missing Information

A significant number of the Summary Sheets failed to have any notation indicating which train cars had been inspected. A review of the Summary Sheets for the period from January 2018 through June 2018 showed that out of 109 Summary Sheets, only 7 had notations indicating that inspections had been performed. Based on the records, it is unclear whether the supervisors failed to perform the inspections or failed to note them after conducting the inspections. Also, the Summary Sheets failed to indicate which supervisor performed the inspections or filled out the forms.

3. Interview of Deputy General Manager of Maintenance of Equipment Operations

According to the Deputy General Manager of MOE Operations, the supervisors are responsible for overseeing the Car Maintainers, but there is not enough time for them to make sure the car maintainers are present at the yard during their shifts and to inspect all the train cars before they leave the yard to ensure they have been cleaned. Instead, the supervisors conduct spot checks of the employees and spot inspections of the train cars. In addition, there are only 4 managers who conduct spot checks of 8 yards, including the Babylon Yard, to make sure the supervisors are doing their jobs.

When informed of the OIG’s findings, the Deputy General Manager stated it was his belief that the supervisors performed the inspections but forgot to note them. He stated his belief is based on the fact that there was no indication that the supervisors were deficient in their other responsibilities, there was no spike in complaints of dirty train cars, and that managers also conduct spot inspections. In regards to the deficiencies in the Summary Sheets, the Deputy General Manager stated that the forms are in the process of being revamped.

C. DUAL EMPLOYMENT

1. Benefits Received as a Volunteer Fireman

According to the Fire Department, they provide a life insurance policy to their members and a Service Award Program that entitles members to compensation based on a member’s length of service, akin to a pension or annuity. Based the records, the Car Maintainer is vested in the fire department’s Service Award Program and currently has 12 service credits. He would be entitled to approximately \$240.00 a month at the age of 62.

2. No Dual Employment Approval

The Car Maintainer did not obtain dual employment authorization for his outside activity as a volunteer fireman. When he was hired in 2017, the Car Maintainer was already a volunteer for the Fire Department. Based on his HR records, the Car Maintainer was provided with a copy of LIRR’s Dual Employment policy when he was hired.

D. ATTEMPT TO INTERVIEW THE CAR MAINTAINER

On March 4, 2020, the OIG attempted to interview the Car Maintainer. However, the Car Maintainer's attorney directed him to not answer any questions.

III. POLICIES AND ANALYSIS

A. The MTA All-Agency Code of Ethics

1. *§ 4.07: Other Employment and Outside Activities*

The MTA All-Agency Code of Ethics, Section 4.07 states, in pertinent part, that employees may engage in outside employment/activity provided that such employment/activity: (1) does not interfere with their ability to devote appropriate time and attention to their employment with their MTA Agency; (2) does not violate the specific guidelines for other employment set by their MTA Agency; and (3) they obtain the required approvals as set forth in the specific procedures for approval of other employment set by their MTA Agency.

On July 31, 2019, the MTA's Chief Compliance Officer issued a notice to all MTA employees stating that all outside employment or activity "performed by an MTA employee outside of their MTA job for compensation or other benefit whether financial or non-financial," including work as a volunteer fire fighter required dual employment approval. According to the LIRR, it had been the practice of the agency to not require dual employment approval for work as a volunteer fireman prior to the July 31, 2019 notice.

Here, the Car Maintainer failed to obtain the required approval for his active outside activity as a volunteer fireman for the North Babylon Fire Department even after the July 31, 2019 notice to all MTA employees. He also performed volunteer work for the Fire Department during work hours.

2. *§ 4.02: Public Trust*

The MTA All-Agency Code of Ethics Section 4.02 states, in pertinent part, 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 Car Maintainer engaged in a course of conduct that raised suspicion among the public that he is likely to be engaged in acts that are in violation of the public trust when he responded to calls for the Fire Department during work hours and while he was on regular paid sick leave and FMLA leave with the LIRR.

B. LIRR Corporate Policies & Procedures

1. *EMPL-009 Dual Employment Policy*

The LIRR Corporate Policy & Procedure Number EMPL-009, Dual Employment Policy, Section IV, Subsection A, provides, in pertinent part: (1) Full-time employment with the LIRR is deemed to be an employee's primary employment. It is the responsibility of every employee to report to work and remain at work according to schedule and to devote appropriate time and attention to his or her LIRR responsibilities so that he or she is able to perform such responsibilities in a safe and efficient manner; (2) LIRR employees may engage in outside employment provided such employment does not interfere with their regular full-time LIRR employment, violate hours of service or other legal requirements or raise any other safety-related concern, and/or constitute a conflict of interest under the Public Officers Law or the MTA Code of Ethics; and (3) Employees who use sick time or leave granted pursuant to the federal Family and Medical Leave Act to engage in outside employment will be subject to disciplinary action up to and including dismissal.

Also, Subsection B (11) states, in pertinent part, that all new employees will be advised by HR that if they wish to continue non-LIRR employment they must file a dual employment notification form prior to commencing employment with the LIRR. If the prospective employee's Department Head determines not to grant the request, the prospective employee must terminate the outside employment within 2 weeks of receiving notice of the determination and must provide proof of termination to his or her Department Head before commencing work at LIRR.

The LIRR informed the OIG that the agency had submitted a revised Dual Employment policy to MTA Headquarters' Compliance Department several years ago, but was not given the authorization to issue it. At present, the MTA has created an All-Agency Dual Employment Form and an All-Agency Dual Employment policy is in development.²

Here, the Car Maintainer failed to remain at work according to his schedule and to devote appropriate time and attention to his LIRR responsibilities as required. The Car Maintainer also used regular sick leave and FMLA leave to engage in outside employment. Lastly, although he was already working as a volunteer fireman when he started his LIRR employment, the Car Maintainer failed to submit a dual employment notification form prior to commencing his employment with the LIRR in violation of the policy and the July 31, 2019 clarification notice that was issued to all MTA employees.

² On September 4, 2015, the Metro-North Railroad updated its Dual Employment & Outside Activities Policy (No. 21-029) in response to the MTA/OIG Report #2014-27 relating to an investigation of dual employment of MNR employees who had outside activities as volunteer fire fighters. MNR's updated Dual Employment & Outside Activity Policy clarify that emergency response and volunteer activities require outside activity approval.

Furthermore, in light of the Metro-North Railroad updating its own dual employment and outside activity policy in 2015, the LIRR could have updated its own policy.

2. *LEAVE-001 Attendance Policy*

The LIRR Corporate Policy & Procedure Number LEAVE-001, Attendance Policy for Represented Employees, Section III, Essential Functions, states, in pertinent part, that LIRR employees are to: (1) “Report to work at the proper location, on time and in condition to perform his/her duties; (2) “Remain on duty for the employee’s full tour unless otherwise excused by proper authority; and (3) “Comply with departmental absence control procedures.”

3. *Issue No. 2407R2 Absence Control Policy*

The LIRR Corporate Policy & Procedure Issue No. 2407 R2, Absence Control Policy, Sections II and III provides, in pertinent part, that “It is the responsibility of each LIRR employee to report at the times, on the days and at the designated locations for which he/she is scheduled, and to remain on duty for the full workday. This is the most important basic obligation an individual assumes as a condition of employment with the LIRR” and employees “are permitted to use sick leave for personal illness or injury. Employees who attempt to use sick leave for any other reason or who use sick leave in violation of this procedure will be subject to disciplinary actions up to and including dismissal.”

4. *LEAVE-003 Family and Medical Leave*

The LIRR Corporate Policy & Procedure Number LEAVE-003, Family and Medical Leave, establishes procedures for providing family and medical leaves of absence in accordance with the FMLA. Section V (M) states, in pertinent part, “An employee on family/medical leave is prohibited from working another job during the hours of his/her regular tour... Violation of this provision may result in disciplinary action, up to and including discharge.”

Here, the Car Maintainer violated these policies when he responded to Fire Department calls during work hours and on days he was on regular paid sick leave and FMLA leave. He further violated this policy by sleeping in his vehicle during work hours.

C. LIRR Maintenance of Equipment Code of Conduct

The LIRR Maintenance of Equipment (MOE) Code of Conduct, ME-121(1) states that sleeping or assuming the position of sleep while on duty and under pay, including during breaks or meal periods, is prohibited at any time, except during emergencies where permission has been granted.

Here, the Car Maintainer was observed asleep in his vehicle during work hours in violation of this Code of Conduct.

IV. FINDINGS

1. The Car Maintainer engaged in dual employment without obtaining prior authorization, in violation of MTA All-Agency Code of Ethics Section 4.07 and LIRR Corporate Policy & Procedure EMPL-009, Section IV (B) (11).
2. The Car Maintainer engaged in dual employment during work hours and days he took paid regular sick leave and FMLA leave with the LIRR in violation of MTA All-Agency Code of Ethics Section 4.02, LIRR Corporate Policy & Procedure EMPL-009, Section IV (A), LEAVE-001, and Issue No. 2407 R2.
3. The Car Maintainer was observed sleeping in his vehicle on October 24, 2019 during work hours in violation of LIRR Corporate Policy & Procedure LEAVE-001 and MOE Code of Conduct, ME-121(1).
4. Based on the finding that a Car Maintainer was able to respond to Fire Department calls and sleep during work hours, there is a deficiency in the monitoring of the car maintainers.
5. There is lack of consistency in the Summary Sheets to record inspections of the train cars and the notations indicating which train cars were inspected were missing on many of the Summary Sheets. In addition, the names of the supervisors who performed the inspections and who filled out the forms were not included in the Summary Sheets.

V. RECOMMENDATIONS

1. We recommend that the LIRR place this letter in the Car Maintainer's personnel file and recoup any payment made to him for hours he did not work.
2. We recommend that the LIRR improve its monitoring procedures of car maintainers to ensure that they are present at their work locations and performing their duties during work hours.
3. We recommend that the LIRR improve its record keeping process, including, having one standardized form for inspections and making sure the inspections are accurately recorded and by whom.

As always, we appreciate your continued courtesy and cooperation. Please advise our office within forty-five (45)³ days of any actions you take pursuant to this letter. Should you have any questions, or need additional information, please contact Executive Deputy Inspector General for Legal Pei Pei Cheng-de Castro at (212) 878-0072.

Very truly yours,

/S/

Carolyn Pokorny

cc: Paige Graves, General Counsel, LIRR
Stephen Papandon, Senior Deputy General Counsel and Ethics Officer, LIRR
Rose Koven, Acting Director of Labor Relations Administration, LIRR

³ Typically we seek a response within 30 days, and recognize that additional time likely will be needed due to the ongoing COVID-19 pandemic.



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Agency Response
to
MTA/OIG #2020-10

LIRR Employee's Time Abuse (Car Appearance Maintainer)

The Long Island Rail Road (LIRR) provided a response to the Office of the MTA Inspector General's (OIG) investigation and report on September 8, 2020. LIRR placed a copy of the OIG report in the employee's personnel file. Since the employee retired during the OIG's investigation, LIRR will try to recoup any payment made to him for hours he did not work.

LIRR has also improved its monitoring procedures of car appearance maintainers by instituting regular spot inspections and more frequent parking lot walk-throughs at the Babylon Yard conducted by supervisors, by utilizing biometric Kronos clocks, and by using sign-in/sign-out sheets for time and attendance verifications. Lastly, LIRR started utilizing 1 consistent form to record follow-up inspections.