



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

June 2, 2020

Via Electronic Email

Catherine Rinaldi
President
Metro-North Railroad
420 Lexington Ave., 11th Floor
New York, NY 10170

**Re: MNR Communications & Signals
Supervisor Incorrect Application of
Overtime under CBA
MTA/OIG #2020-11**

Dear Ms. Rinaldi:

The Office of the MTA Inspector General (OIG) has substantiated an allegation that a Metro-North Railroad (MNR) Maintenance of Way, Communications & Signals Supervisor (C&S Supervisor) improperly claimed overtime on 9 separate occasions when the terms of his collective bargaining agreement (CBA) did not permit him to claim those overtime hours. However, the OIG found that MNR supervisors approved the overtime and they and other employees were not clear as to how the CBA and overtime applied to the C&S Supervisor.

Accordingly, we recommend that MNR review this CBA with its managers and employees and instruct those employees who fall under this CBA of the appropriate ways the employees may be paid for overtime. We further recommend that MNR review the time records of employees working under the same CBA to determine whether any employees were paid for hours of overtime to which they were not entitled, and to recoup such monies.

I. BACKGROUND

In 2005, MNR hired the C&S Supervisor as an electrician assigned to Maintenance of Equipment (MOE) in Brewster, New York. In 2009, he transferred to Communications & Signals (C&S) and worked with cameras in North White Plains. In 2012, he became a Radio Maintainer assigned to the Croton Harmon Yard. In 2015, he was promoted to C&S Supervisor, where he was assigned to the Commuter District Tower and generally worked from 7:30 a.m. to 4:00 p.m., Monday through Friday with an unpaid half-hour meal.

The C&S Supervisor was responsible for five shops: the Commuter District Tower (6 employees); Harlem Radio based in Croton Harmon Yard (7 employees); Brewster Yard (1 employee); North White Plains Yard (3 employees); and West of Hudson (1 employee). His employees are responsible for the repair of station-based radio communications, portable radios, MTA Police Department and Maintenance of Way Base stations, platform public address systems, kiosks and Daktronics displays. On August 12, 2019, the C&S Supervisor was transferred to a new position as Radio Positive Train Control Supervisor for the Harlem Line.

In the C&S Division, a “call out” is an afterhours call reporting a problem with any radio-based communication system, such as station kiosks, platform public address systems, Daktronics displays, and MTA Police Department and Maintenance of Way base stations. The C&S Supervisor received call outs from the Wire Chief’s Office. Responding to these after-hour calls may entitle the C&S Supervisor, and any radio maintainers who respond, to overtime. The C&S Supervisor’s work rules are determined by the CBA between MNR and the American Railway & Airway Supervisors Association (ARSA) Maintenance of Way, and all of its rules addressing overtime state that supervisors earn overtime “for work performed,” and make no provision for a minimum payment.

II. INVESTIGATION

A. Record Review

A review of the C&S Supervisor’s MNR time sheets between June 2018 and February 2019, revealed that on 9 dates, the C&S Supervisor reported 3 hours of “call-out” overtime. The C&S Supervisor submitted a “M of W Exception Form” for all 9 of these dates claiming three hours of overtime.¹ The form contains a number of pre-printed exceptions that an employee could claim for missed Kronos² swipes including, “Trouble Call Out.” The C&S Supervisor checked that box on the form and usually added a notation indicating the location.³ All forms were approved by his supervisor, the Assistant Director, Radio Systems/Radio/PA, C&S, MNR (Assistant Director). For instance, on July 8, 2018, the C&S Supervisor claimed three hours of overtime, from 1:30 a.m. to 4:30 a.m., for “trouble call out” at the Beacon Kiosk. Similarly, the C&S Supervisor claimed three hours of “trouble call out” overtime, from 5 p.m. to 8 p.m., at the Brewster Kiosk.

¹ These dates are: June 12, 2018; July 8, 2018; July 27, 2018; July 28, 2018; September 17, 2018; September 29, 2018; November 29, 2018; December 3, 2018; and December 14, 2018.

² Kronos is a timekeeping system which requires an employee to be physically present in order to either biometrically read a thumb print or read a swipe with an employee identification card.

³ When the Exception Form did not identify a location, his handwritten time sheets noted the call out location.

B. OIG's Interviews of MNR Employees

1. *The C&S Supervisor*

The C&S Supervisor stated that a “call out” is an after-hour or weekend emergency notification to the supervision of the CD Tower that a base station radio, public address system or information kiosk has malfunctioned. He stated that when he receives an after-hour trouble ticket, or a “call-out,” he has the discretion to decide whether the problem requires immediate attention or can wait until the next workday. If the call out requires immediate attention, for instance if the public address system is unavailable at a station, the C&S Supervisor will assign a radio maintainer to respond to the trouble call and, if required, he will also respond to the field.

The C&S Supervisor said that he often decides that a call does not require immediate attention and will wait until the next work day in order to reduce the need for overtime. He stated that employees that he supervises often complain about how little overtime they are assigned. He stated that he is entitled to claim three hours of “call-out” overtime even when he addresses the issue over the phone in less than three hours. The C&S Supervisor believed that it was a practice that supervisors can claim the three hours of call-out overtime and had been making such claims since 2015. He did not know whether MNR has a written policy providing minimum hours for call-out responses. The C&S Supervisor stated that his time sheets were approved by his direct supervisor.

2. *Assistant Director*

The Assistant Director directly supervised the C&S Supervisor.⁴ The Assistant Director was not aware of a written MNR policy that authorizes “call-out” overtime for C&S supervisors and radio maintainers. However, the Assistant Director stated that he believed that supervisors and radio maintainers are entitled to, and the Assistant Director has allowed them, to claim a minimum of three hours of call-out overtime when contacted after hours. He approved all the C&C Supervisor's claims for 3 hours of overtime during our review period.

3. *Assistant Director, Positive Train Control Radio Systems*

The current Assistant Director, Positive Train Control Radio Systems (Assistant Director of PTC) confirmed that he supervised the Assistant Director prior to his retirement. The Assistant Director of PTC stated that a supervisor has the discretion to decide whether an after-hours trouble ticket requires an immediate response or can wait until the next workday. He further stated that supervisors are not entitled to a minimum amount of overtime when they respond to a “call out”, but should only claim the number of hours they were engaged in actual work. The Assistant Director of PTC opined that a supervisor could, reasonably, respond to a trouble ticket by telephone, and take that time as overtime. However, if the problem requires more than two hours on the phone, he expects the supervisor to respond to the field location himself, and possibly request the presence of radio maintainers.

⁴ The Assistant Director retired effective September 28, 2019

4. *Assistant Director, Labor Relations, MNR*

The C&S Supervisor's work rules are governed by ARSA. According to MNR's Assistant Director of Labor Relations, generally, all of the MNR Collective Bargaining

Agreements, with the exception of ARSA MOW, provide that "an employee called outside of normal working hours and reports to work" is entitled to a minimum payment. The amount of the minimum payment depends on each CBA. For instance, the ARSA MOE CBA provides for payment at time and one-half with a minimum of three (3) hours at such rate. However, the ARSA MOW does not provide for a minimum number of hours of overtime. Instead, all of its rules addressing overtime state that supervisors earn overtime "for work performed," and make no provision for a minimum payment. The Assistant Director of Labor Relations stated that as of the fourth quarter of 2019 there were 5,595 represented MNR employees and the CBA that the C&S Supervisor is under covers approximately 63 of those employees.

III. FINDINGS

1. On at least 9 separate occasions, the C&S Supervisor claimed three hours of call out overtime for responding to trouble calls by telephone that may have required less than three hours of work. However, the C&S Supervisor tried to minimize overtime by deferring responses to the next work day.
2. MNR supervisors and employees are unclear as to how employees under the ARSA MOW CBA are allowed to be for paid overtime.

IV. RECOMMENDATIONS

1. MNR should instruct managers and employees working under the ARSA MOW CBA of the appropriate ways the employees may be paid for overtime.
2. MNR should review the time records for employees working under the ARSA MOW CBA to determine whether any employees were paid for hours of overtime to which they were not entitled, and to recoup such monies.

As always, we appreciate your continued courtesy and cooperation. Please advise our office within forty five (45) days⁵ 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: Richard Gans, General Counsel, MNR

⁵ Typically we seek a response within 30 days, and recognize that additional time likely will be needed due to the ongoing COVID-19 pandemic.



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

Agency Response
to
MTA/OIG #2020-11

MNR Communications & Signals, Supervisor Incorrect Application of Overtime under CBA

In response to the Office of the MTA Inspector General (OIG)'s investigation and report, Metro-North Railroad (MNR) reviewed the ARSA MOW Supervisors time keeping records and found this to be an isolated case involving one MOW Supervisor. MNR Senior Management met with all managers of the ARSA MOW supervisors to confirm that they clearly understand that the overtime rules allow overtime only for actual work performed. MNR also issued a memorandum on the specific issue on July 10, 2020.