



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

July 6, 2020

Via Electronic Mail

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

**Re: NYC Transit Car Inspector
Unauthorized Dual Employment
MTA/OIG #2020-20**

Dear Ms. Feinberg,

The Office of the MTA Inspector General (OIG) substantiated allegations that from February 11, 2019 to June 23, 2019, a New York City Transit (NYC Transit) Car Inspector (Car Inspector) was simultaneously employed with AirTrain at John F. Kennedy International Airport (JFK AirTrain) without dual employment authorization from NYC Transit. Additionally, on 13 instances he used MTA sick and vacation leave in order to work his second employment. The OIG also found that the Car Inspector was not truthful to the OIG during his interview, when he claimed that he attempted to obtain dual employment authorization but could not provide any corroborating information or details.

We recommend that the NYC Transit discipline the Car Inspector as it deems appropriate, up to and including termination and recoup any payments to the Car Inspector for days he purported to be on sick or vacation leave.

I. BACKGROUND

On August 20, 2007, NYC Transit hired the Car Inspector. He works out of the Coney Island Pneumatic Shop located in Brooklyn, New York. His shift varied while he was dually employed with regular days off being Saturday and Sunday.

The Car Inspector was employed for JFK AirTrain from February 11, 2019 until his resignation, which was effective on June 23, 2019.

II. INVESTIGATION

A. Unauthorized Dual Employment

The OIG compared the Car Inspector's NYC Transit and JFK AirTrain payroll records from February 11, 2019 until June 23, 2019 and found that the Car Inspector took various types of leave from the MTA, including sick leave and vacation leave, to work at JFK AirTrain. The chart below compares the Car Inspector's time and attendance with the MTA and JFK AirTrain on 13 dates.

| | Date | MTA Shift | MTA Leave Type | AirTrain Shift Worked |
|----|---------|------------------------|-------------------|-------------------------|
| 1 | 2/21/19 | 11:00 p.m. - 7:00 a.m. | Sick | 6:00 a.m. - 2:30 p.m. |
| 2 | 2/22/19 | 11:00 p.m. - 7:00 a.m. | Sick | 8:00 a.m. - 4:30 p.m. |
| 3 | 2/25/19 | 11:00 p.m. - 7:00 a.m. | Sick | 6:00 a.m. - 2:30 p.m. |
| 4 | 3/1/19 | 11:00 p.m. - 7:00 a.m. | AVA | 6:00 a.m. - 2:30 p.m. |
| 5 | 4/3/19 | 3:00 p.m. - 11:00 p.m. | Sick | 6:00 a.m. - 2:30 p.m. |
| 6 | 4/25/19 | 3:00 p.m. - 11:00 p.m. | Personal Business | 8:30 a.m. - 5:00 p.m. |
| 7 | 5/8/19 | 3:00 p.m. - 11:00 p.m. | Sick | 6:00 a.m. - 2:30 p.m. |
| 8 | 5/9/19 | 3:00 p.m. - 11:00 p.m. | Sick | 6:00 a.m. - 2:30 p.m. |
| 9 | 5/10/19 | 3:00 p.m. - 11:00 p.m. | Sick | 6:00 a.m. - 2:30 p.m. |
| 10 | 5/20/19 | 3:00 p.m. - 11:00 p.m. | Vacation | 2:00 p.m. - 2:30 a.m. |
| 11 | 5/21/19 | 3:00 p.m. - 11:00 p.m. | Vacation | 10:00 a.m. - 10:30 p.m. |
| 12 | 5/24/19 | 3:00 p.m. - 11:00 p.m. | Vacation | 2:00 p.m. - 10:30 p.m. |
| 13 | 5/28/19 | 3:00 p.m. - 11:00 p.m. | Vacation | 2:00 p.m. - 10:30 p.m. |

The Car Inspector was paid for approximately 104 hours of sick leave and vacation by the MTA on days he was working for JFK AirTrain, which resulted in the MTA paying the Car Inspector approximately \$3,600 for leave to which he was not entitled.

According to NYC Transit records, the Car Inspector did not have dual employment authorization. The OIG reviewed the Car Inspector's pre-employment application and other forms he completed as part of the NYC Transit on-boarding process. On August 7, 2007, the Car Inspector signed a form acknowledging he received an information package from NYC Transit containing various policies, including the NYC Transit Dual Employment Policy, NYC Transit Policy/Instruction Dual Employment, and the MTA All-Agency Code of Ethics.

Additionally, the Superintendent completed regularly scheduled MTA training on topics including ethics and the Agency rules regarding outside employment, which includes a certification that he had read and understood the MTA All-Agency Code of Ethics.

B. Interview of the Car Inspector

On July 1, 2020, the OIG interviewed the Car Inspector. The Car Inspector confirmed that he began his employment with NYC Transit in August 2007 as a Car Inspector. His current shift is 3:00 p.m. to 11:00 p.m., Monday through Friday. He also stated he had a prior shift of 11:00 p.m. to 7:00 a.m. but could not remember exactly when he worked that shift.

The Car Inspector confirmed that he was employed with JFK AirTrain as a technician for a few months in 2019, but could not remember the exact dates. The Car Inspector first stated that he did not receive dual employment authorization, although he was aware of the policy requiring it. When asked why he did not follow the policy, he claimed that he faxed a dual employment request form “downtown”, but could not remember to what number, where he got the number, when he faxed it, or whether his supervisor even signed the form. Additionally, he has no record of the form or the fax. The Car Inspector did not follow up on the form when he received no acknowledgement of authorization.

The Car Inspector initially denied using leave from the MTA to work his dual employment at JFK AirTrain. The Car Inspector was then directed to specific dates on both his NYC Transit and JFK AirTrain time and attendance record in which he took sick leave from the MTA, but worked a shift at JFK AirTrain. The Car Inspector conceded that is what the records state, but then claimed he could not remember.

The Car Inspector claimed that he ended his employment JFK AirTrain because the schedule conflicted with his MTA schedule.

III. POLICIES AND ANALYSIS

A. MTA All-Agency Code of Ethics

1. *§ 1.07: Cooperation with Audits and Investigations*

The MTA All-Agency Code of Ethics Section 1.07 states, in pertinent part that “employees must cooperate fully and honestly with audits and investigations conducted by the MTA Inspector General, ... or other governmental agencies”. The failure to so cooperate will subject an Employee to appropriate disciplinary penalty, up to and including dismissal.

Here, the Car Inspector failed to fully and honestly answer the OIG questions about why he did not obtain dual employment authorization and instead claimed he that he had faxed a dual employment request form but could not provide any information as to when, where, or whom he faxed it. Nor could he confirm whether his supervisor even signed the form as required and he retained no record of the form or fax. His lack of candor violates section § 1.07 of the Code of Ethics.

2. *§ 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 (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 Car Inspector failed to obtain the required approval for his employment with JFK AirTrain.

3. *§ 4.02: Public Trust*

The MTA All-Agency Code of Ethics, 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 Car Inspector falsely reported sick to the MTA to work for JFK AirTrain and received pay for which he was not entitled.

B. NYC Transit Rules and Regulations and Policy/Instruction

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

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

2. *Policy/Instruction Number 4.23.2: Dual Employment*

The NYC Transit Policy/Instruction Number 4.23.2 for Dual Employment, Section IV, 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. If the department subsequently denies the request, the employee will be required to terminate the outside employment within two (2) days of receiving notice of the determination. Section VI, further provides, in pertinent part, that all newly appointed employees who wish to continue other employment must file a dual employment request prior to commencing employment with 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.

Here, the Car Inspector violated these policies when he failed to file a dual employment request for approval prior to his employment with JFK AirTrain.

IV. FINDINGS

1. The Superintendent violated § 1.07 of the MTA All-Agency Code of Ethics.
2. The Car Inspector engaged in unauthorized dual employment in violation of the MTA All-Agency Code of Ethics Section 4.07, NYC Transit Rule 4(g) and NYC Transit Policy/Instruction Number 4.23.2, Section IV(A)(4) and Section VI(B)(2).
3. The Car Inspector violated the public trust by falsely reporting sick to the MTA to work is unauthorized dual employment with JFK AirTrain in violation of the MTA All-Agency Code of Ethics Section 4.02.

V. RECOMMENDATION

We recommend that NYC Transit impose discipline on the Car Inspector as it deems appropriate, up to and including termination and recoup payments made to the Car Inspector for the sick and vacations days he used for his other employment.

As always, we appreciate your continued courtesy and cooperation. Please advise our office within forty-five (45)¹ 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: David Farber, General Counsel, NYC Transit
Monica Murray, Chief Administrative Officer, NYC Transit
Kim Moore-Ward, Vice President, Office of Labor Relations, NYC Transit

¹ 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 #2020-20

NYC Transit Car Inspector Unauthorized Dual Employment

In July 2020, in response to the Office of the MTA Inspector General's (OIG) investigation and report, New York City Transit (NYC Transit) advised the OIG that it suspended and brought disciplinary charges against the NYC Transit Car Inspector. On July 10, 2020, NYC Transit conducted a Step 1 disciplinary hearing and sustained the penalty of dismissal. The Car Inspector has appealed the decision. The Step 2 disciplinary proceeding is tentatively scheduled for August 20, 2020.