



Office of the Inspector General

Metropolitan Transportation Authority

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Carolyn Pokorny
MTA Inspector General

April 12, 2021

Via Electronic Mail

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

**Re: Husband and Wife Conductors’
Time and Attendance Abuse
(LIRR Conductors)
MTA/OIG #2021-06**

Dear Mr. Eng:

The Office of the MTA Inspector General (OIG) has substantiated allegations received from the Long Island Rail Road (LIRR) that husband and wife Conductors, (Conductor 1, Conductor 2, and collectively the Conductors) committed time theft and falsified records. We found that between September 2020 and November of 2020, the Conductors abused time by failing to show up for their shifts and covering for each other. Basically, they were scheduled to work the same train during their shift, but the OIG caught them allowing one or the other to be home instead of both working the train. Notably, each of these shifts included 3 hours of built-in overtime. The OIG’s periodic surveillance over a period of 4 weeks confirmed 2 instances where the Conductors covered for each other.

During interviews with the OIG, the Conductors admitted to doing this on upwards of 6 occasions, citing their need to care for a family member on short notice. Had they officially requested the time off on short notice, it would have resulted in potential discipline and a financial penalty. The Conductors covered for each other by not reporting their spouse’s absence to the LIRR’s Movement Bureau as required by LIRR policy; instead, they punched each other’s timeclocks to create documentation that both were present on the train.

The Conductors failed to answer the OIG questions fully and honestly. They asserted that the agency told them to not use the biometric clocks due to contamination concerns and yet they falsified time records by touching the clocks to punch each other into work, to further

deceive the agency. Although Conductor 1 admitted to punching in for her husband and her husband punching in for her, Conductor 2 was dishonest with the OIG and denied this behavior.

Their deception resulted in wage theft of at least \$2,368 for Conductor 1 (4 days at \$592 per day) and \$1,054 for Conductor 2 (2 days at \$527 per day) – over \$3,400 for their household. We recommend they be disciplined as the LIRR deems appropriate, up to and including termination. Additionally, the agency should recoup payment for the days the Conductors did not show up for their shifts.

I. BACKGROUND

The LIRR hired Conductor 1 in November 1994 and Conductor 2 in December 1994. From September 8, 2020 through November 6, 2020, both the Conductors held Job 62, which was based out of Speonk Yard. In this assignment, they were to work together on the same trains, one as the conductor and the other, as the assistant conductor. The shift is from 2:30 p.m. to 1:38 a.m. (which includes 3 hours of built-in overtime), Monday through Friday, and their regular days off are Saturday and Sunday. The Conductors shared a residence located in Long Island, New York (about a ½ hour drive from Speonk).

Job 62 normally entails that the Conductors ride 2 passenger trains: one which leaves Speonk and arrives in Montauk and the other, from Montauk back to Speonk. Specifically, train #2728, would leave Speonk at 3:00 p.m. and arrive in Montauk at 4:14 p.m. and train #2729, which would leave Montauk at 4:52 p.m. and arrive in Speonk at 6:11 p.m. At around 10:30 p.m., the Conductors would then deadhead¹ to Montauk on train #2720 to take the non-passenger train, #5703, at 12:22 a.m. from Montauk back to Speonk. However, during the entire period the Conductors held Job 62, the 2 passenger trains were canceled due to track work and therefore, the Conductors were only required to deadhead to Montauk and take train #5703 back to Speonk. Pursuant to the collective bargaining agreement, a conductor and an assistant conductor are required on trains of 3 or more cars in the interest of safety and security.

The OIG confirmed with 2 LIRR supervisors that the Conductors would be on stand-by until needed and could stay home until deadheading to Montauk. According to LIRR policy and the collective bargaining agreement, if a conductor calls in sick with less than 3 hours of notice, they are not paid sick time for the day and it is considered a “run failure” under the absence control policy. The conductor would get a letter of caution for the first offense in a calendar year. If they have another run failure in that year for any reason, the conductor is not paid and is issued trial charges.

¹ Deadheading means the physical relocation of a train employee from one point to another as a result of a railroad-issued verbal or written directive. *See 49 CFR 228.5.*

II. INVESTIGATION

A. Records Review

The OIG reviewed security videos² from the LIRR for the train (#2720) the Conductors used to deadhead to Montauk and analyzed the time and attendance records for both Conductors during the time they held Job 62. A payroll records analysis determined that they were paid approximately \$592 (Conductor 1) and \$527 (Conductor 2) per shift, of which \$213 (Conductor 1) and \$192 (Conductor 2) was for the built-in overtime.

B. Surveillance of the Conductors

In October 2020, the OIG conducted periodic surveillance on the Conductors at their residence and Speonk Yard. Using surveillance in conjunction with the video and time records review, the OIG found 2 instances where either Conductor 1 or Conductor 2 did not show up for their shift as follows:

1. Tuesday, October 20, 2020: The OIG investigators performed surveillance in the vicinity of the Conductors' residence at approximately 9:00 p.m. While at the residence, OIG investigators observed Conductor 2, driving a Dodge Ram, pull into the driveway and enter his residence. Also parked in the couple's driveway was a White Jeep. At approximately 9:43 p.m., investigators observed Conductor 1 walk out of the residence, alone; and enter the White Jeep. The investigators then followed the White Jeep. At 10:09 p.m., investigators observed the White Jeep pull into the Speonk Yard. At 10:23 p.m., Conductor 1 walked from the yard to the train platform with an unidentified male and female. Conductor 2 was never observed at the Speonk Yard or on the platform. At 10:29 p.m., Conductor 1, the male, and female entered the rear of train #2720 in car #5002. The train then left the station heading to Montauk. Video from that train in car #5002 showed Conductor 1, but not Conductor 2 onboard. However according to time records, Conductor 2 punched in, using the Kronos clock³, at the Speonk Yard at 10:14 p.m., the same time Conductor 1 punched in.
2. Wednesday, October 21, 2020: OIG staff reviewed video from car #5001 of train #2720 departing at approximately 10:30 p.m. from Speonk to Montauk. Through surveillance, investigators determined that the Conductors usually board the train in the rear car. On this date and time, Conductor 2 was observed on the train, but Conductor 1 was not observed with him. However according to time records, Conductor 1 punched in at the yard at 10:13 p.m., the same time Conductor 2 punched in.

² There were multiple dates that the requested video footage was not available.

³ The Kronos clock is used for time keeping and the employee can punch in their employee number to confirm attendance.

C. OIG Interviews

1. *Conductor 1*

Conductor 1 confirmed that she has worked as a conductor for the LIRR since November 1994. At the time of the interview, she was assigned to a job out of Port Jefferson, working 2:00 p.m. to 12:00 a.m. with Saturday and Sunday off. Prior to this job, Conductor 1 stated she had Job 62 from September 20, 2020 through November 8, 2020. Conductor 1 stated that during the time she had Job 62, the 2 passenger trains were cancelled. Therefore, she was only required to deadhead to Montauk and work the train with no passengers from Montauk to Speonk. Since those trains were cancelled, she stated that she had to “report to supervision,” which entails a phone call to her Transportation Manager. She explained that she is on stand-by if needed and can stay home until she takes the train from Speonk to Montauk.

Regarding her time, Conductor 1 stated she always used the Kronos clock prior to the pandemic and then she was informed by LIRR to not use it to not risk people getting sick. Conductor 1 stated that the Kronos clock at Speonk is in an unmanned trailer. Conductor 1 stated that she ordinarily is required to punch in, but not punch out. Conductor 1 claimed that she resumed punching in regularly in November 2020.

Conductor 1 was shown a series of photographs from the OIG’s surveillance. Conductor 1 confirmed that the first photo was of her residence with her vehicle (the White Jeep) and her husband’s (Conductor 2) truck (the Dodge Ram) in the driveway. The second photo was a still from the security video on October 20, 2020 in car #5002 and contained 2 women entering train #2720. Conductor 1 confirmed herself, and the Engineer in the photo. The third photo, from October 20, 2020, was of 2 individuals walking on the Speonk platform. Conductor 1 stated that it was a picture of the Engineer and a male, not her husband (Conductor 2), who she could not identify. Conductor 1 confirmed that the staff assigned to Job 62 was herself, Conductor 2, and the Engineer.

Conductor 1 was shown an LIRR video from October 21, 2020. In the video, the Engineer and Conductor 2 entered the train leaving Speonk and headed to Montauk at approximately 10:30 p.m. Conductor 1 conceded she was not in the video and she did not work that day. Conductor 1 also stated she did not take any type of leave for the day. Conductor 1 admitted that there were 3-4 times when she did not go to work without taking any form of leave.

Conductor 1 was then shown an LIRR video from October 20, 2020, which showed the Engineer and Conductor 1 entering the train leaving Speonk heading to Montauk at approximately 10:30 p.m. Conductor 1 conceded that Conductor 2, was not on the train and he was actually home without taking leave. Conductor 1 also admitted that she punched in Kronos for Conductor 2. Conductor 1 stated that Conductor 2 stayed home a couple of times instead of working. Conductor 1 stated that either her or Conductor 2 would stay home to care for a family member with medical conditions. Conductor 1 also stated that the Engineer knew about the situation with the family member but claimed that her supervisors did not. According to

Conductor 1, at the time of the interview, she and Conductor 2 work opposite shifts so that someone is always home.

2. *Conductor 2*

Conductor 2 confirmed that he has worked as a conductor for the LIRR since December 1994. Conductor 2 stated he works the “extra list”⁴ with Saturday and Sunday off. Conductor 2 stated that twice a year all the conductors can change picks for their jobs, usually in November and May. Conductor 2 stated that he is also a union representative and for the past 2 years, he has been the Vice Local Chairman for the local conductors’ union.

Conductor 2 also stated that he had picked Job 62 and held it at the same time as Conductor 1. Conductor 2 said that during the time he had Job 62, the 2 passenger trains were cancelled, and he was only required to deadhead to Montauk, usually at 10:30 p.m., and work that train with no passengers from Montauk to Speonk. He believed the trains were cancelled because of track work. Conductor 2 stated that since he did not have to work the 2 passenger trains that he only had to “report to supervision” which was a call to the supervisor in charge that day. Conductor 2 stated he would call the same Transportation Manager as Conductor 1 and did not have to report to the yard at the start of his shift.

Conductor 2 stated that he would punch into the Kronos clock when he reported to Speonk to keep track of his time. Conductor 2 also said that he was informed by LIRR during the pandemic to not punch in as to not risk people getting sick with COVID-19. Another reason Conductor 2 said he was not punching in during September 2020 was that a family member who lives with them, had COVID-19 and he did not want to use the Kronos clock to infect other people. Despite claiming COVID-19 exposure as an excuse for not using Kronos, Conductor 2 admitted to still working and riding trains with other LIRR employees and paying passengers. Conductor 2 said that the union held a meeting at the end of October 2020 telling the conductors they should start punching in again.

Conductor 2 was shown the same series of photographs as Conductor 1 for identification purposes. Conductor 2 confirmed his shared residence with Conductor 1 and their vehicles in the driveway. He also identified his wife (Conductor 1) and the Engineer. Conductor 2 also confirmed that the crew required for working Job 62, was himself, the Engineer, and Conductor 1.

Conductor 2 was shown a LIRR security video taken on October 20, 2020 at approximately 10:30 p.m. In the video the Engineer and Conductor 1 were seen entering the train at Speonk headed to Montauk. Conductor 2 conceded he was not on the train and that he was home but did not take leave.

⁴ Extra List assignments are used to cover known vacancies in run assignments, such as, vacations, jury duty, illness, etc.

Conductor 2 was also shown a LIRR video from October 21, 2020, which showed the Engineer and Conductor 2 on the Speonk platform at approximately 10:30 p.m. boarding the train headed to Montauk. Conductor 2 conceded Conductor 1 was not in the video and she did not work that day. Conductor 2 also stated she (Conductor 1) did not take any type of leave for the day. When asked how many times Conductor 1 did not go to work without taking any type of leave, Conductor 2 said he was not sure.

Conductor 2 had no explanation for how he was punched in Kronos on October 20, 2020 and claimed that anyone could have his code and punch him in. Yet he acknowledged his code was not punched in any other facility. Conductor 2 claimed he did not think Conductor 1 was punching him in and they never had a conversation about it. When confronted with the fact that Conductor 1 admitted to punching him in, he had no explanation and maintained that he never punched her in, nor asked her to punch him in.

Conductor 2 admitted that he stayed home 1-2 times instead of working. Conductor 2 said he did not want to get a run failure because he would not have called “out” 3 hours prior to his shift. A run failure would result in discipline. Conductor 2 conceded that it was wrong for him to get paid, including the 3 hours of overtime, for days he was not working. Conductor 2 stated that either he or Conductor 1 would stay home to take care of a family member. Conductor 2 claimed that at the time he did not think about taking FMLA to care for a family member. At the time of the interview, Conductor 2 stated that he and Conductor 1 now work opposite shifts so that someone is always home.

3. *The Engineer*

The Engineer stated that she started with the LIRR as a Station Cleaner in December 1993. The Engineer started her training as a Locomotive Engineer in January 1995 and was officially promoted in April 1996. In September 2020 through November of 2020, she worked Job 62. The Engineer stated she worked that job with the Conductors. The Engineer said that when she started that job there were revisions in place due to track work, and that she was required to deadhead to Montauk and take the work train (no passengers) from Montauk and put it back into the Speonk Yard.

The Engineer stated that the Conductors and herself were required to work that job. The Engineer admitted that there were times when either of the Conductors did not show up for their shift. The Engineer said that when Conductor 2 would not show up, she assumed it was because of his union responsibilities. When Conductor 1 did not show up, the Engineer thought she was having issues at home regarding a family member. The Engineer claimed that it was safe to operate the train with just 2 people and felt they were both competent and capable of working by themselves.

The Engineer acknowledged that she is friends with the Conductors and said she had a conversation with them about 2 weeks prior to her interview. The Conductors told the Engineer that they were interviewed by the OIG regarding their time and attendance and clocking in. The Engineer told the OIG that she did not notify anyone when either of them did not show up and

that she was not aware of a policy in place where she had to notify anyone if the crew was short personnel. The LIRR confirmed that there was no such policy to notify if a crew member was absent for the Engineer.

In summary, the OIG found that the Conductors stole time and falsified records in order to allow the other to stay home. Surveillance, video review, and time records confirmed at least 2 instances of this misconduct: 1 by each Conductor. However, Conductor 1 admitted to not showing up for her shift 3-4 times and would not quantify how many times Conductor 2 was absent. She would only say a couple of times. Conductor 2 only admitted to 1-2 times of skipping his shift and claimed to not know how many times his wife (Conductor 1) stayed home, although they live in the same household and were caring for the same family member. Additionally, their assertions that the agency told them to not use the Kronos clocks due to safety issues is refuted by a LIRR memorandum issued on March 11, 2020 regarding Biometric Timekeeping (detailed below). Despite making this claim regarding use of Kronos, Conductor 1 admitted to punching in Kronos for her husband on days he did not work. Conductor 2, however, claimed ignorance regarding how he was punched in on a day he did not show up and denied ever punching his wife in. Conductor 2 conceded that he did not take the appropriate sick leave for his shift to avoid discipline.

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 provides, in pertinent part, that employees must cooperate fully and honestly with audits and investigations conducted by the MTA Inspector General. The failure to so cooperate will subject an Employee to appropriate disciplinary penalty, up to and including dismissal.

Here, the Conductors' assertion that the agency told them to not use the Kronos clocks due to safety issues is not supported by policy. The LIRR issued a memorandum on March 11, 2020 titled *Biometric Timekeeping – Modification of Employee Requirements*, which instructed employees to continue to enter their 5-digit employee ID. Employees can enter their Employee ID with their finger or a pencil eraser or a tissue and should wash their hands or use sanitizer after punching in. Despite making this false assertion, Conductor 1 made sure to punch in for herself and her husband (Conductor 2) on a day he was not a work to further deceive the agency. Additionally, she was punched in on a day she was not at work. Additionally, Conductor 2 failed to fully and honestly answer the OIG questions regarding punching his wife (Conductor 1) into Kronos and admitting that he knew she punched him in.

2. § 4.02: Public Trust

The MTA All-Agency Code of Ethics, Section 4.02 states, in pertinent part, that employees shall not use or attempt to use their official position to secure unwarranted privileges or exemptions for themselves or others. Furthermore, employees shall not by their conduct give reasonable basis for the impression that any person can improperly influence them or unduly enjoy their favor in the performance of their official duties, or that they are affected by the kinship, rank, position, or influence of any party or person.

Here, the Conductors were able to abuse time because of their marital relationship. The Conductors had the privilege to stay home for most of their 11-hour shift, 3 hours of which were built-in overtime, and yet failed to ride the 1 train they were required to. Instead of just accepting the penalty, by taking sick leave to care for their family member, they chose to violate policy by not reporting the other's absence and falsifying time records by punching each other into Kronos. Their deceitful behavior resulted in wage theft of at least \$2,368 for Conductor 1 (4 days at \$592 per day) and \$1,054 for Conductor 2 (2 days at \$527 per day) – over \$3,400 for their household.

B. LIRR Policies, Rules, and Agreement

1. LEAVE-001 Attendance Policy

LIRR Policy # LEAVE-001, III Essential Functions, states, in pertinent part, that LIRR employees must: (1) report to work at the proper location, on time and in condition to perform his/her duties; and (2) remain on duty for their full tour unless otherwise excused by proper authority.

2. 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. All employees are provided with adequate amounts of leave.

3. LIRR Rules of the Operating Department

LIRR Rules of the Operating Department, Duties and Responsibilities Train Service Employees, Section 801, states, in pertinent part, that [Conductors] and the Engineer are responsible for the prompt movement, safety and care of their trains and for the. [Conductors] must report the absence of any crew members who fail to report for duty at the proper time to the Movement Bureau.

4. *LIRR Collective Bargaining Agreement*

i. Article 22, Notice of Disablement

The Agreement entered into by and between the LIRR and Trainmen represented by SMART (Sheet Metal, Air, Rail & Transportation Workers) Transportation Division Local Lodges 645 and 1831, (Collective Bargaining Agreement), Article 22, Notice of Disablement, states, in pertinent part, that (a) Trainmen unable to work account of sickness or disability must notify Crew Dispatcher at least three (3) hours in advance of their reporting time. Failure to do so will be deemed a "run failure" and any time lost will not be considered in determining eligibility for sick leave allowance, except in extenuating circumstances.

ii. Appendix B Sick Leave Agreement

Furthermore, the Collective Bargaining Agreement, Appendix B Sick Leave Agreement, Section 8, states, in pertinent part, that:

(c) to be entitled to sick leave for any day on which he/she is absent from work because of illness, an employee except where it is impossible to do so must, at least three (3) hours before the commencement of his/her scheduled tour of duty for that day. Where it is impossible to give such notice within the time prescribed herein, it must be given as soon as circumstances permit. Failure to cause such notice to be given will deprive the employee of his/her right to be paid for such tour of duty. Failure to cause such notice to be given as herein provided will not be excused unless the Carrier is convinced that special circumstances made it impossible and is also convinced that notice was given as soon as the special circumstances permitted.

Here, as detailed above, the Conductors failed to meet the most important basic obligation they assumed as a condition of their employment by failing to show up at all for their shifts. To avoid the penalty of a run failure the Conductors did not take the appropriate leave to care for a family member. Instead, the Conductors did not report the other's absence to the Movement Bureau, as required. To cover their misconduct, they falsified time records by punching each other into Kronos, despite not regularly punching in when they held that Job 62. And then they lacked candor during their interviews with OIG.

IV. FINDINGS

1. The Conductors abused time by failing to show up for their shift and engaging in a dishonest course of conduct to avoid penalty and docked pay, as detailed above, in violation of the MTA All-Agency Code of Ethics Section 4.02, MTA LIRR LEAVE-001 Attendance Policy, Issue No. 2407R2 Absence Control Policy, LIRR Rules of the Operating Department, and the Collective Bargaining Agreement Article 22 and Appendix B.
2. The Conductors failed to fully and honestly answer the OIG questions, in violation of the MTA All-Agency Code of Ethics Section 1.07.

V. RECOMMENDATIONS

Based on the above investigation and findings, the OIG recommends the LIRR:

1. Impose discipline on Conductor 1 as it deems appropriate, up to and including termination and recoup payment for at least the 4 days Conductor 1 admitted to not working her shift.
2. Impose discipline on Conductor 2 as it deems appropriate, up to and including termination and recoup payment for at least the 2 days Conductor 2 admitted to not working his shift.

As always, we appreciate your continued courtesy and cooperation. Please advise our office within 30 days of any actions you intend to take, and the result of any action taken pursuant to this letter. In addition, please indicate your acceptance or rejection of each recommendation and the proposed quarter in the calendar year that the recommendation will be implemented. Please be advised that the Office of the MTA Inspector General may publicly disclose this report consistent with its statute and other state law, which may include name(s) of individuals and entities. 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
Rose Koven, Acting Director of Labor Relations Administration, LIRR



Carolyn Pokorny
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Agency Response
to
MTA/OIG #2021-06

Husband and Wife LIRR Conductors' Time and Attendance Abuse

In April 2021, in response to the Office of the MTA Inspector General (OIG)'s investigation and report, the Long Island Rail Road (LIRR) brought disciplinary charges against the LIRR Conductors, which included charges for Misrepresentation, Falsification of Timecard and Accepting Payment for Time Not Worked, and violating the Rules of the Operating Department. The Conductors waived their rights to trial and admitted to the charges.

The Conductors each received a 30 calendar days suspension with 15 calendar days (which is the equivalent of 11 working days for the purpose of payroll) to be served and 15 days held in abeyance for 1 year, as well as any discipline assessed in the subsequent case. For each, the days held in abeyance would only be served if the Conductor engaged in a similar offense within that 1 year. In lieu of serving the suspension time without pay, the Conductors were assessed a fine by LIRR whereby each Conductor will report to their regular assignment each day for 15 days but will only be paid 75% of their salary for that shift. As a result, the 25% of their salary for each shift represents approximately \$149 per shift as a fine (approximately \$1,637 total).

In addition, the Conductors will also repay for the time not worked on October 20, 2020 (Conductor 2) and on October 21, 2020 (Conductor 1). Finally, the Conductors cannot bid, select, or accept any regular assignment to any job/run that the other is assigned, for a period of 1 year.