



Office of the Inspector General
Metropolitan Transportation Authority
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Carolyn Pokorny
MTA Inspector General

September 17, 2021

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

**Re: Time Abuse and False Filings by Track
Foreman and Surfacing Foreman
MTA/OIG #2021-21**

Dear Mr. Eng:

The Office of the MTA Inspector General (OIG) uncovered that a Long Island Rail Road (LIRR) Track Foreman and a Track Surfacing Foreman (Surfacing Foreman) committed time abuse and filed false time records.¹ Both were high overtime earners who from 2018—2020 earned double their regular pay in overtime, netting well over \$200,000 annually. From March 12, 2019 to August 12, 2019, OIG surveillances of the Track Foreman showed that on 8 dates, he arrived late to work and was observed at his residence or other non-work locations when he was supposed to be working. The Track Foreman also signed and submitted his own time records falsely indicating that he was at work. Likewise, from November 22, 2019 to December 5, 2019, OIG's surveillances of the Surfacing Foreman showed that on 4 dates, he was observed at his residence when he was supposed to be working. The Surfacing Foreman also signed and submitted his own time records falsely indicating that he was at work. The Surfacing Foreman also failed to fully and honestly answer OIG's questions regarding the dates he was observed at home when he claimed he was at work.

The Track Foreman and Surfacing Foreman are supervisors. In addition to time abuse and submitting false filings, they failed in their supervisory responsibility. By being absent during their work hours, both foremen left their crew unsupervised and disregarded their duty to oversee the employees' safety and work performance, including ensuring proper time and attendance. We

¹ In December 2020 and February 2021, the United States Attorney's Office for the Southern District of New York charged 5 current and former LIRR employees on [allegations of overtime fraud](#) as a result of OIG's ongoing investigations into high overtime earners. The criminal matters remain pending. The OIG is continuing in its proactive efforts to detect overtime fraud and abuse.

recommend that the Track Foreman and Surfacing Foreman be disciplined as LIRR deems appropriate, up to and including termination, and recoup any payments made for hours they did not work. The Track Foreman and Surfacing Foreman's conduct also appears to violate the New York State Public Officers Law. Therefore, we are forwarding this matter to JCOPE for action as it may deem appropriate.

I. BACKGROUND

The Track Foreman began employment at LIRR in May 2000 as a Track Worker. He was promoted to Track Foreman in June 2006. As a Track Foreman, he is responsible for the maintenance and safe conditions of the tracks. He is also responsible for supervising approximately 9 employees, including their safety, conduct, and work performance. The Track Foreman is currently assigned to the Richmond Hill Yard. However, in 2019, he was assigned to the Bayside Yard located at 217th Street and 40th Avenue, Bayside, New York, and he also worked overtime shifts at the Nassau Interlocking near the Mineola Yard located at Willis Avenue between 2nd Street and Hinck Way, Mineola, New York. His regular tour is from 8:00 a.m. to 4:00 p.m. Monday through Friday. The Track Foreman completed the MTA's All Agency Code of Ethics policy certification in 2015, 2016, and 2017.

The Surfacing Foreman began employment at LIRR in November 2000 as a Car Appearance Maintainer. He became a Track Worker in August 2003 and was promoted to Foreman in June 2007. He became a Surfacing Foreman in August 2018. As Surfacing Foreman, he is responsible for making sure that the tracks are safe by performing repair and maintenance work. He is also responsible for supervising 6 to 12 employees, including overseeing their time and attendance. During his entire time as Surfacing Foreman, he has been assigned to the Babylon Yard located at 70 Foxglove Road, West Islip, New York. His regular tour is from 7:30 a.m. to 3:30 p.m. Monday through Friday. The Surfacing Foreman completed the MTA's All Agency Code of Ethics policy certification in 2015, 2016, and 2017.

II. INVESTIGATION

A. LIRR Records

The LIRR Engineering–Planning and Operational Support unit is responsible for entering daily labor data into the LIRR time management system known as the Corporate Time and Attendance Management System (CTAMS). LIRR employees' payroll are based on the entries in CTAMS. The unit makes the entries based on the Daily Gang Labor Sheets (Labor Sheets) that are submitted by each department's field supervision. The Labor Sheets are filled out and signed by the foremen and then signed by the next level supervisors. The Labor Sheets include the start and end times of each shift worked by the employees. OIG review of the Track Foremen's January 2019 through September 2019 Labor Sheets and Surfacing Foreman's September 2018 through August 2019, and November 22, 2019, through February 6, 2020, Labor Sheets showed that they signed the majority of their own Labor Sheets.

In 2018 and 2019, the Track Foreman earned more than double his regular pay² in overtime pay. Although his overtime pay went down slightly in 2020, he still earned close to double his regular pay in overtime pay. The Track Foreman's earnings for the last 3 years are as follows:

TRACK FOREMAN Description	2018	2019	2020
Regular Pay	\$ 78,834	\$ 77,353	\$ 79,620
Overtime Pay	\$129,881	\$108,244	\$109,316
Double Overtime Pay	\$ 79,109	\$ 46,673	\$ 39,990
Total Pay (Regular and Overtime combined)	\$287,824	\$232,270	\$228,926

Similarly, from 2018 through 2020, the Surfacing Foreman earned more than double his regular pay in overtime pay. The Surfacing Foreman's earnings for the last 3 years are as follows:

SURFACE FOREMAN Description	2018	2019	2020
Regular Pay	\$ 81,343	\$ 85,186	\$ 81,245
Overtime Pay	\$102,111	\$106,609	\$107,868
Double Overtime Pay	\$ 80,643	\$ 79,286	\$ 93,119
Total Pay (Regular and Overtime combined)	\$264,097	\$271,081	\$282,232

B. Surveillances

1. Track Foreman

From March 12, 2019, to August 12, 2019, the OIG conducted 12 surveillances. On 8 of the dates, the OIG observed the Track Foreman at his residence in Carle Place, New York, or other locations unrelated to work during the hours he claimed to be working.

The 8 instances where OIG investigators observed the Track Foreman not at work during parts of his shifts are laid out in the chart below. Unless indicated otherwise, the Track Foreman's work location was presumed to be the Bayside Yard, which is approximately 20-minute drive from his home.

² The amounts for regular pay reflect the Track Foreman and Surfacing Foreman's pay for regular shift hours worked. They do not include sick leaves, vacation days, or other paid leaves.

No.	Date	Observation	Recorded Work Hours (Labor Sheets)
1.	3/12/2019	Track Foreman was observed leaving his home at 8:25 a.m.	8:00 a.m. to 4:00 p.m.
2.	3/13/2019	Track Foreman was observed leaving his home at 8:07 a.m. and arriving at Bayside Yard at 8:24 a.m.	8:00 a.m. to 4:00 p.m.
3.	3/21/2019	Track Foreman's vehicle was observed at home at 3:55 a.m., and he was observed leaving his home at 8:13 a.m.	10:30 p.m. (3/20/19) to 8:00 a.m. (3/21/19); and then 8:00 a.m. to 4:00 p.m. (3/21/19)
4.	3/27/2019	Track Foreman was observed leaving with his child at 9:20 a.m., and he was observed dropping off his child at school and leaving at 9:25 a.m.	8:00 a.m. to 8:30 p.m.
5.	3/28/2019	Track Foreman's vehicle was observed at home at 3:45 a.m., and he was observed leaving his home at 7:55 a.m. with 2 children.	10:30 p.m. (3/27/19) to 8:00 a.m. (3/28/19); and 8:00 a.m. to 4:00 p.m. (3/28/19)
6.	4/12/2019	Track Foreman's vehicle was observed at home at 2:45 a.m., and he was observed leaving his home at 8:09 a.m.	10:30 p.m. (4/11/19) to 8:00 a.m. (4/12/19); and 8:00 a.m. to 4:00 p.m. (4/12/19)
7.	4/18 - 4/19/2019	Track Foreman's vehicle was observed at home at 10:05 p.m. on 4/18/19, along with his wife's vehicle. No one was observed entering or exiting the residence between the beginning and end of surveillance at 9:30 a.m. on 4/19/19. [Vehicle observation only.]	10:30 p.m. (4/18/19) to 8:00 a.m. (4/19/19); and No regular shift on 4/19/19
8.	4/24 - 4/25/2019	Track Foreman and his wife's vehicles were observed at home at 8:45 p.m. on 4/24/19 to 8:41 a.m. on 4/25/19 when the Track Foreman was observed taking a child's car seat from his wife's vehicle and placing it in his vehicle. At 9:30 a.m., he was observed driving away with his family in his vehicle.	4:00 p.m. (4/24/19) to 1:00 a.m. (4/25/19); and 8:00 a.m. to 5:30 p.m. (4/25/19) [Did not sign Labor Sheet for the 8:00 a.m. to 5:30 p.m. shift on 4/25/2019]

The Track Foreman signed his own Labor Sheets for the above-referenced dates, except for the 8:00 a.m. to 5:30 p.m. shift on April 25, 2019. Based on the Track Foreman's regular hourly pay rate of approximately \$49, the Track Foreman received approximately \$2,898 in unauthorized pay for hours he did not work during OIG surveillance.

2. Surfacing Foreman

From November 22, 2019, to February 6, 2020, the OIG conducted 5 surveillances. On 4 of the 5 dates, the OIG observed the Surfacing Foreman at his residence in West Babylon, New York, during the hours he claimed to be working.³

The 4 instances where OIG investigators observed the Surfacing Foreman not at work during parts of his shifts are laid out in the chart below. During this period, Surfacing Foreman's work location was the Babylon Yard, which is approximately a 5-minute drive from his home.

No.	Date	Observation	Recorded Work Hours (Labor Sheets)
1.	11/22/2019	Surfacing Foreman's vehicle was observed at home from 11:15 a.m. to 12:20 p.m. [Vehicle observed only.]	7:30 a.m. to 3:30 p.m.
2.	11/26/2019	Surfacing Foreman's vehicle was observed at home at 11:00 a.m. The vehicle was observed leaving his home at 12:40 p.m., and the Surfacing Foreman was observed returning in the same vehicle at 1:00 p.m. He was observed checking his mailbox before entering his home. At 3:00 p.m., he was observed taking out the garbage and going back inside his home. Surveillance ended at 3:30 p.m.	7:30 a.m. to 3:30 p.m.
3.	12/2/2019	Surfacing Foreman's vehicle was observed at home at 1:00 p.m. At 1:54 p.m., he was observed bringing out pieces of a broken dresser from inside the home to curbside multiple times. At 2:55 p.m., he was observed driving away and returning home at 3:10 p.m. Surveillance ended at 3:15 p.m.	7:30 a.m. to 3:30 p.m.
4.	12/5/2019	Surfacing Foreman's vehicle was observed at home at 6:30 a.m. At 7:14 a.m., he was observed coming out of his home, walking to the side of the house, and going back inside his home. He was observed driving away at 8:30 a.m.	6:30 a.m. to 3:30 p.m.

The Surfacing Foreman signed his own Labor Sheets for the above-referenced dates. Based on the Surfacing Foreman's regular hourly pay rate of approximately \$51, the Surfacing Foreman

³ While not included as a surveillance, on January 24, 2020, the OIG observed the Surfacing Foreman's vehicle at his residence at 3:05 a.m. when he claimed to have worked an overtime shift from 11:30 p.m. on January 23, 2020, to 7:30 a.m. on January 24, 2020, on his Labor Sheet.

received approximately \$557 in unauthorized pay for the hours he did not work during OIG surveillance alone.

C. Interviews

1. *Track Foreman*

Regarding his regular shifts, the Track Foreman acknowledged he is required to be at a LIRR location for the entire tour.⁴ As for overtime shifts, the Track Foreman stated employees are required to arrive on time, but there is an “unspoken rule” that employees could leave the LIRR facility and be on stand-by if there is no work as long as they remain nearby and available to return when called. However, the Track Foreman acknowledged it would **not** have been appropriate for him to go home while on stand-by. While he initially claimed he sometimes went home to print out documents because the agency did not provide necessary office equipment at the yards, he acknowledged he should not have been home when asked about specific surveillance dates as detailed below.

In his OIG interview, the Track Foreman stated that as a Foreman, he is responsible for completing and signing his own Labor Sheets along with the ones for the employees he supervises. After signing, he submits them to his supervisor. The Track Foreman acknowledged his signatures on the following Labor Sheets:

- 3/12/2019; 3/13/2019; 3/20/2019 (overtime); 3/21/2019; 3/27/2019 (regular and overtime); 3/28/2019; 4/11/2019 (overtime); 4/12/2019; 4/18/2019 (overtime); 4/19/2019; 4/24/2019 (overtime); and 4/25/2019

The Track Foreman’s responses to the surveillance dates are as follows:

When informed he was observed leaving his house at 8:25 a.m. on March 12, 2019, and arriving at the Bayside Yard at 8:24 a.m. on March 13, 2019, when his shift started at 8:00 a.m. on both dates, the Track Foreman acknowledged he should have been at work by 8:00 a.m.

The Track Foreman was informed that he was observed at home from 3:55 a.m. to 8:13 a.m. on March 21, 2019, when he was supposed to have been working an overtime shift and a regular shift from 10:30 p.m. on March 20, 2019, to 4:00 p.m. on March 21, 2019. After reviewing his Labor Sheets, the Track Foreman stated he was assigned to Nassau Interlocking in Mineola for the overtime shift, which is approximately a block from his home. Although he did not recall the specific date, he stated he was likely on stand-by and decided to wait at home because it was cold.

⁴ The Track Foreman stated there was an unofficial, but accepted practice of 10-minute grace periods before the Kronos clocks were put in place; the employees were permitted to arrive 10-minutes late and depart 10-minutes early without penalty. This was confirmed by the Track Supervisor, who stated supervisors generally did not penalize employees for 10 to 15-minute late start or early departure although it was not an official LIRR policy.

When asked about the employees under his supervision, he stated they were likely in a trailer or in their cars when he was home. When asked if he believed it was okay for him to go home when his employees remained at the yard, the Track Foreman responded “maybe it’s unethical, ... I may have been wrong, but I justified it, ... Your judgment lapses if you were working the hours I did.” While acknowledging that going home may not have been in line with agency policy, he stated his “response time was great.” When asked if it was possible he was home the entire shift, he stated he had to have arrived on time, but it was possible he was home earlier than 3:55 a.m.

When informed he was observed leaving his home with his child at 9:25 a.m. on March 27, 2019, when his shift started at 8:00 a.m., the Track Foreman stated that his wife is ill, so she was likely not feeling well that day and he must have needed to take his child to school unexpectedly. He stated he later received Family and Medical Leave Act (FMLA)⁵ approval that allows him to call in late in such situations but he “must have cut corners at that time to give her help.”

When informed he was observed at home from 3:45 a.m. to 7:55 a.m. on March 28, 2019, although he was supposed to have been working an overtime shift from 10:30 p.m. on March 27, 2019, to 8:00 a.m. on March 28, 2019, he stated he did not recall the date, but he was likely on stand-by because he was again assigned to Nassau Interlocking near his home based on the Labor Sheet. He acknowledged he had a “lapse in judgement” that happens “when you get comfortable with your crew,” and added he may not have been “geographically in the right place,” but he got the job done. He stated it was the same situation for the overtime shifts on April 11, 2019, and April 18, 2019; he was assigned to Nassau Interlocking, so he was likely on stand-by when he was observed at home.

The Track Foreman was informed that he was observed at home from 8:45 p.m. on April 24, 2019, to 9:30 a.m. on April 25, 2019, and at 9:30 a.m., he was observed driving away from his home with his family which indicates he was not headed to work. He was reported to have been working an overtime shift from 4:00 p.m. on April 24, 2019, to 1:00 a.m. on April 25, 2019, then an 8:00 a.m. to 5:30 p.m. shift on April 25, 2019. The Track Foreman stated the overtime shift was likely the same stand-by situation at Nassau Interlocking, but stated he was likely not scheduled to work the 8:00 a.m. to 5:30 p.m. on April 25, 2019. He noted he did not sign the Labor Sheet for this date. After searching his phone, he stated he had on his phone that he was at Hotel Fairfield in Pennsylvania on April 25, 2019, so someone made a mistake on the Labor Sheet.

2. Surfacing Foreman

The Surfacing Foreman acknowledged he is required to be at work for his entire shift. However, he stated he starts his shifts at home to complete the Labor Sheets. At the start of each shift, he stated he has calls with his supervisor and his crew regarding the day’s assignment. Before heading out to the LIRR yard, he completes the Labor Sheets for the prior day based on the calls

⁵ Based on LIRR records, the Track Foreman had FMLA from March 8, 2019, through March 7, 2020, and again from May 15, 2020, through April 1, 2021. During the first year, he used approximately 4 hours of FMLA leave, and he did not use any during the second year. He currently does not have FMLA.

with his crew and sends them to his supervisor. He stated it takes him approximately 15 to 20 minutes to do the Labor Sheets. According to the Surfacing Foreman, he has no choice but to do the Labor Sheets at home because the agency does not provide the space or office equipment to do them at the yard. He continued to claim he was doing the Labor Sheets at home when asked about a specific surveillance date and stated the Labor Sheet he signed claiming he was at work when he was observed at home was a mistake. During OIG's surveillances, the Surfacing Foreman was observed essentially hanging out at home during work hours – he was observed taking out the garbage, taking out pieces of a dresser to curbside, checking the mail, among others.

In his OIG interview, the Surfacing Foreman acknowledged that as a Foreman, he is responsible for completing and signing his own Labor Sheets along with the ones for the employees he supervises. The Track Foreman acknowledged his signatures on the following Labor Sheets:

- 11/22/2019; 11/26/2019; 12/2/2019; 12/4/2019 and 12/5/2019

The Track Foreman's responses to the surveillance dates are as follows:

When informed that his vehicle was observed at his home from 11:15 a.m. to 12:20 p.m. on November 22, 2019, when he reported he worked from 7:30 a.m. to 3:30 p.m. on the Labor Sheet, the Surfacing Foreman stated he did not recall the date but acknowledged he should not have been at home during that time. After reviewing the Labor Sheet, he stated he was assigned to maintenance work on the Automatic Geometric Guidance System (AGGS) equipment that day. Since the equipment was not being used, he was home because he likely had nothing to do at the yard.

When informed he was observed at home from 11:00 a.m. to 3:30 p.m. on November 26, 2019, when he reported he worked from 7:30 a.m. to 3:30 p.m. on his Labor Sheet, the Surfacing Foreman responded, "that can't be right" because he usually takes the Thanksgiving week off and "I'm not the type of guy that hangs out at home when scheduled to work." After checking his phone, he stated he was out-of-state visiting his brother on November 27th, so he was likely off that day. When reminded that his signature was on the Labor Sheet, he stated he must have made a mistake on the Labor Sheet.

The Surfacing Foreman was informed he was again observed at home from 1:00 p.m. to 3:15 p.m. on December 2, 2019, when he reported he worked from 7:30 a.m. to 3:30 p.m. on his Labor Sheet. After acknowledging he should not have been home and stating, "it was bad judgment on my part," he noted he was again assigned to do maintenance work on that date, so he likely did not have anything to do because they could not get on the track. When asked where his crew, the employees he supervised, were when he was at home, the Surfacing Foreman stated he did not know.

When informed that he was observed at home from 6:30 a.m. to 8:30 a.m. on December 5, 2019, when he reported he worked overtime from 6:30 a.m. to 7:30 a.m. and a regular shift from 7:30 a.m. to 3:30 p.m. on his Labor Sheets, the Surfacing Foreman acknowledged he was "technically" supposed to have been at work, but claimed he was likely doing paperwork at home. After stating it was "bad judgment," the Surfacing Foreman insisted he had no choice but to do the

paperwork at home because the agency did not give him the space or office equipment to do it at the yard. When informed that this contradicted his prior statement that it took approximately 15 to 20 minutes to do the Labor Sheets, he stated he was not doing paperwork for the entire 2 hours, but he had to wait to start the paperwork because his supervisor did not start work until 7:30 a.m.

3. *Supervisors*

In their OIG interviews, Track Supervisor and Supervisor of Track Surfacing, the Track Foreman and Surfacing Foreman's supervisors respectively, stated LIRR employees are required to be at a LIRR site during their entire shifts, except during their half-hour lunch breaks. When asked if employees were allowed to leave LIRR sites and go home when they are on stand-by, essentially down time when they have nothing to do at the yards, both supervisors stated they are not; no employee is permitted to be at home during paid LIRR time. Also, although possible, it is highly unlikely that there would be nothing for the employees to do; even if not allowed to be on the tracks due to unexpected circumstances, there is always work to be done at the yard or other locations.

When asked if foremen were permitted to do the Labor Sheets at home, the Supervisor of Track Surfacing stated they are permitted to do them at home, but it would be on their own time because employees are not allowed be home while on paid time. Also, the Babylon Yard has a building that a foreman could use to do the Labor Sheets. Notably, both supervisors stated not much space is needed to do the Labor Sheets and some did them in their vehicles and submitted them using their phones.

In summary, the OIG found that the Track Foreman and Surfacing Foreman committed time abuse by claiming they were at work when they were at home or other non-work locations. They filed false time records and received pay for hours they did not work based on their false submissions. Also, as foreman, they both failed in their supervisory responsibility to oversee their employees' safety and conduct by going home and leaving their crew behind. The Track Foreman stated his employees were likely in a trailer or in their vehicles while he was home, and the Surfacing Foreman stated he did not know where his crew were when he was home.

The Surfacing Foreman also failed to fully and honestly answer the OIG's questions. Regarding the November 26, 2019, surveillance when he was observed at home almost for his entire shift, the Surfacing Foreman initially claimed the OIG's observation was wrong because he was on vacation, and he was "not the type of guy who hangs out at home when scheduled to work." He then claimed he did not work that day. When confronted with the Labor Sheet with his signature, he claimed he must have made a mistake on the Labor Sheet. Based on the OIG's multiple surveillances, the Surfacing Foreman did not make a mistake on his November 26, 2019, Labor Sheet, and he was not completing Labor Sheets at home. He was observed doing various chores, essentially hanging out, at home on multiple dates—he was observed taking out the garbage, taking out pieces of a dresser to curbside, checking the mail, among others, all during his work hours. Also, while acknowledging he was required to be at a LIRR location during his entire shift, the Surfacing Foreman insisted he completed the Labor Sheets for himself and his crew at home because the agency failed to provide the necessary space or office equipment at the yard. This

claim was contradicted by his supervisor, who stated that the Babylon Yard has a building the foremen could use to do the paperwork. Also, his supervisor and the Track Supervisor both stated foremen could complete Labor Sheets in their vehicles and submit them using their phones. At no time are employees allowed to be home during paid time.

III. POLICIES AND ANALYSIS

A. The MTA All-Agency Code of Ethics

1. *§ 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.

2. *§ 9.01 General*

The MTA All-Agency Code of Ethics, Section 9.01, states, in pertinent part, that employees who violate any provision of the State Ethics Laws or of this Code may be subject to disciplinary action consistent with that administered for violations of the rules and regulations of the applicable MTA Agency, up to and including termination.

Here, the Track Foreman and Surfacing Foreman engaged in a course of conduct that raised suspicion among the public that they are likely to be engaged in acts that are in violation of the public trust when they falsely reported they were at work when they were not. Also, they signed their own Labor Sheets with the false information and, based on this false information, the Track Foreman and Surfacing Foreman received pay for hours they did not work. Lastly, by going home and leaving the employees under their supervision behind, they failed in their responsibility as supervisors to oversee their employees' safety and conduct.

3. *§ 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. Failure to cooperate will subject an employee to appropriate disciplinary penalty, up to and including dismissal.

Here, the Surfacing Foreman was not fully honest in his statements to the OIG when he claimed he made a mistake when he reported he worked on November 26, 2019, on his Labor Sheet and claimed he was filling out Labor Sheets at home during work hours. His claim that he had no choice but to do the paperwork at home because the agency did not provide the necessary space or

office equipment at the yard was contradicted by his supervisor, who stated the Babylon Yard has a building the employees could use to do paperwork. Also, his supervisor and the Track Supervisor stated Labor Sheets could be done in employees' vehicles and submitted using their phones. As for November 26, 2019, OIG observed the Surfacing Foreman at home almost his entire shift. After initially claiming the OIG's observation was wrong because he was away and he was "not the type of guy who hangs out at home when scheduled to work," he stated he made a mistake when confronted with the Labor Sheet with his signature. Contrary to his statement, OIG surveillances showed he did hang out at home during work hours.

B. LIRR Policies

1. LEAVE-001 Attendance Policy

LIRR Policy # LEAVE-001, III Essential Functions, Subsection A LIRR Employees, 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. 2407 R2 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 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.

Here, the Track Foreman and Surfacing Foreman falsely reported they were at work when they were not. They signed their own Labor Sheets containing the false information and, based on this false information, the Track Foreman and Surfacing Foreman received pay for hours they did not work.

C. New York State Public Officers Law

1. Section 74(3)(d)

The New York State Public Officers Law § 74(3)(d) states, in pertinent part, that no officer or employee of a state agency should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or others, including but not limited to, the misappropriation to himself or to others of the property, services or other resources of the state for private business or other compensated non-governmental purposes.

Here, the Track Foreman and Surfacing Foreman used their official position to secure pay for hours they did not work by signing and submitting false Labor Sheets.

2. *Section 74(3)(h)*

The New York State Public Officers Law § 74(3)(h) states, in pertinent part, that an officer or employee of a state agency 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 in MTA All-Agency Code of Ethics §§ 4.02 and 9.01, and LIRR Policies LEAVE-001 and Issue No. 2407 R2, the Track Foreman and Surfacing Foreman engaged in acts that violated their trust.

IV. FINDINGS

1. The Track Foreman and Surfacing Foreman failed to show up on time or remain on duty during their shifts in violation of LIRR LEAVE-001 Attendance Policy and LIRR Issue No. 2407 R2 Absence Control Policy.
2. The Track Foreman and Surfacing Foreman engaged in a course of conduct that raised suspicion among the public that they are likely to be engaged in acts that are in violation of the public trust when they falsely reported they were at work when they were not, and completed and signed their own Labor Sheets containing the false information. Based on this false information, the Track Foreman and Surfacing Foreman received pay for hours they did not work. By signing their own Labor Sheets with false information, the Track Foreman and Surfacing Foreman used their official position to secure pay for hours they did not work in violation of MTA All-Agency Code of Ethics, §§ 4.02 and 9.01, and the New York State Public Officers Law §§ 74(3)(d) and (h).
3. The Surfacing Foreman failed to cooperate fully and honestly in his OIG interview in violation of MTA All-Agency Code of Ethics § 1.07.

V. RECOMMENDATIONS

We recommend that: (1) the Track Foreman be disciplined as LIRR deems appropriate, up to and including termination; (2) the Surfacing Foreman be disciplined as LIRR deems appropriate, up to and including termination; and (3) LIRR recoup any payments made for hours they did not work. A copy of this report will be provided to JCOPE for its review and any action it deems appropriate.

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 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 further advised that the Office of the MTA Inspector 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
Stephen Papandon, Senior Deputy General Counsel – General Law and Ethics Officer,
LIRR
Rose Koven, Acting Director of Labor Relations Administration, LIRR
Monica Stamm, General Counsel, JCOPE



Carolyn Pokorny
MTA Inspector General

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Agency Response
to
MTA/OIG #2021-21

Time Abuse and False Filing by Track Foreman and Surfacing Foreman

In September 2021, in response to OIG's investigation and report, LIRR brought disciplinary charges against Claude F. Birong, the Track Foreman, and Mark A. Speruta, the Surfacing Foreman, including charges for Theft of Time, Dereliction of Duty, Conduct Unbecoming an LIRR Employee, and Dishonesty. In October 2021, Birong and Speruta waived their rights to trial, admitted to the charges, and signed a last chance agreement noting that future violations of theft, theft of wages or attempted theft of wages will subject them to dismissal.

They each received a 30 calendar days suspension without pay and agreed to make restitution. Birong agreed to make restitution in the amount of \$2,197.32, and his 30-day suspension is worth approximately \$7,800. Speruta agreed to make restitution in the amount of \$497.39, and his 30-day suspension is worth approximately \$8,100.