



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Metropolitan Transportation Authority Metro-North Railroad

Forensic Audit of Payments to On-Board Service Managers



Report 2011-S-35

June 2012

Executive Summary

Purpose

The purpose of our audit was to determine whether the employees in Metro North's On-Board Services Unit (Unit) fulfilled their duties and performed the assigned tasks for which they were paid—specifically, riding trains in order to observe and report on the performance of train crews. Our audit covered the period January 1, 2009 through June 30, 2011.

Background

The Metro-North Railroad (Metro-North), a constituent of the Metropolitan Transportation Authority (MTA), established the Unit in 2004 to monitor train crew performance in such areas as fare collection and passenger safety. The Unit consists of a supervisor and five employees. Its annual employee compensation costs \$832,676. Unit staff members are expected to complete and document at least six train rides daily.

Key Findings

- While Unit staff members are required to monitor the performance of train crews, they have not been accountable for their own work performance and time and attendance.
- Of the work periods we examined, the Unit staff members failed to document 29 percent of the rides they were required to complete, raising questions about whether the rides were actually taken.
- We estimate that four Unit staff members are being paid an excess of \$170,000 annually for work that might not have been performed.
- In violation of Metro-North policy, the Assistant Vice President responsible for the Unit did not disclose the referral of a relative who was hired in the Unit over more qualified candidates. Once hired, the relative received special privileges and remained in the direct line of supervision by the Assistant Vice President, in possible violation of the New York State Public Officers Law.

Key Recommendations

- Investigate the productivity, time, and attendance of Unit staff and determine whether any salary payments need to be recouped or discipline is appropriate.
- Determine whether the current Unit staffing is justified and necessary.
- Strengthen supervision over the Unit and address the other risk factors associated with Unit operation.

Other Related Audits/ Reports of Interest

[MTA Metro-North Hours of Service \(2010-S-60\)](#)

[MTA Overtime \(2009-S-88\)](#)

State of New York
Office of the State Comptroller

Division of State Government Accountability

June 14, 2012

Joseph Lhota
Chairman and Chief Executive Officer
Metropolitan Transportation Authority
347 Madison Avenue
New York, NY 10017

Dear Mr. Lhota:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by doing so, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit, *Metro-North Railroad: Forensic Audit of Payments to On-Board Services Managers*. This audit was performed pursuant to the State Comptroller's authority under Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law. This engagement was undertaken as part of a series of comprehensive forensic audits of overtime practices and other payroll-related payments at the Metropolitan Transportation Authority.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

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This report is also available on our website at: www.osc.state.ny.us

Background

The Metropolitan Transportation Authority (MTA) is a public benefit corporation providing transportation services in and around the New York City metropolitan area. The MTA comprises seven constituent agencies, including the Metro-North Railroad (Metro-North), which operates a commuter railroad between New York City and parts of upstate New York and Connecticut.

Metro-North engineers and conductors (train crews) are responsible for operating trains, collecting fares, and ensuring passenger safety. In 2004, Metro-North established an On-Board Services Unit (Unit) to monitor train crew performance. As of July 2011, the Unit had a supervisor and five On-Board Service Managers (staff); and the total annual cost of the Unit, including salaries and fringe benefits, was \$832,676. Our audit examined the time and attendance of all six individuals employed in the Unit.

According to Metro-North officials, each Unit staff member is assigned to monitor train crew performance for a specific train line (e.g., New Haven). In order to fulfill his or her duties, in the normal course of events, each staff member must ride a minimum of six trains per day and complete an electronic Activity Log (log) documenting each ride and recording any observations about train crew performance. The Unit supervisor is responsible for ensuring that the Unit staff are riding the required number of trains and documenting their rides by completing the logs. The supervisor is also responsible for reviewing the logs and determining whether corrective actions and referrals regarding poor performance are necessary.

Audit Findings and Recommendations

The duties of certain public employees require that those employees be able to travel and function independently. Management policies and procedures must ensure that such employees actually perform the duties for which they are paid at the expected level of performance. According to those premises, our audit found supervision of the Unit staff to be lacking. Based on apparently inaccurate log entries and evidence of undocumented rides, a lack of demonstrated controls over time and attendance, and other identified risks, we found clear evidence that the On-Board Services Unit staff had failed to do their job of supervising train crews, and the Unit's supervisor failed to supervise Unit staff. We reviewed 300 rides that were expected to be taken and documented by four Unit employees. Required documentation in logs and observations regarding the performance of the train crews had not been completed for 29 percent of the 300 rides we examined. In 14 percent of the rides, staffers simply were not on the job although they were scheduled to work, were paid for those hours, and did not charge accruals. We conservatively estimate that these four staff members are compensated \$170,000 in salary and fringe benefits annually for work even though there is no evidence it was performed. We also found that the Metro-North Assistant Vice President responsible for the Unit may have improperly referred a relative to be employed in the Unit, in possible violation of Metro-North policy; and supervises said employee in possible violation of the New York State Public Officers Law (Public Officers Law). Our findings are detailed below.

Employee Accountability

Logs

- Unit staff members are required to complete and maintain logs of their train-riding activities and record any observations they make. These logs are vital in assessing the productivity of Unit staff and enable management to assess train crew performance. Our audit found that Unit staff failed to complete and maintain the logs, did not complete them timely, and submitted logs of limited value due to missing data, incorrect data, and late reporting of data.
- We examined the time, attendance, and logs for four employees of the Unit for 50 days during October 1, 2010 through April 30, 2011. During that time, the four employees were required to take 300 train rides and to complete a log documenting each ride. Our review found that only 211 logs were available. There were no logs to support any work that may have been performed for the other 89 rides they were required to take. Unit staff members failed to document 29 percent of their train rides as required, and offered no explanation for the absence of the logs. We also found that, for an aggregate of 7 days during the 50-day period, three staff members were recorded as being present at work even though no rides were logged for those days. Despite these discrepancies, Unit staff members did not charge their time and leave accruals, and were paid for work that they might not have performed.

- Unit staff members are required to make six train trips daily and to work an eight-hour day. Our review of the logs found that Unit staff averaged about four train trips daily, which comprised an average of 4.25 hours of work each day.
- The logs that were actually filed are not reliable because they were not filed daily and were instead created days, weeks, or months after the work to be documented was performed. Our examination of the 211 logs that were available found that these logs were drafted an average of 40 days late, ranging from 2 to 80 days after the workday to be documented.
- None of the 211 logs reported any significant performance or safety issues. In other words, the Unit reported no issues or problems with any portion of Metro-North service anywhere along the lines monitored for an extended period—an assessment that raises serious questions about the quality of oversight provided by the Unit.
- In some instances, the contents of the logs appeared to be incorrect or falsified. For example, one log recorded that a Unit staffer boarded train number 1439 in Rye even though the published schedule for that train did not include a stop in Rye. In another instance, the same train ride had been entered twice in the log, with details reported about two separate train crews.
- In response to our observations about late and missing logs, Unit staff members claimed that they kept handwritten notes for each train ride. None of the staff we interviewed could produce any handwritten notes when asked to do so. The Unit staff's failure to file contemporaneous reports of its purported activities raises concerns about whether required duties were fulfilled and undermines the credibility of the Unit itself.

Other Risks

- We found several instances in which Unit staffers used the Internet for personal enjoyment during scheduled working hours, in violation of Metro-North policy. On May 18, 2011, one staff member spent 6.5 hours on firearm sites and Google. A few months earlier, on January 18, 2011, another staff member spent five hours on the Internet on commercial sites such as "Chuck E. Cheese." Other sites visited regularly during working hours included Facebook and sites for on-line shopping and banking.
- Each staff member was given a mobile phone for work-related communications. Our review of the phone usage statements during scheduled work hours revealed very little communication between staffers and their supervisor, on any Metro-North phone line. Instead, the statements reflected out-of-state calls and several calls to the home of one of the staff members. In response to these observations, the supervisor claimed that one staff member maintains contact with him using land line phones and that other staff members use email. No documentation was provided to us to support his assertions.

Supervision

- The Unit supervisor does not regularly review the logs to ensure that each employee takes (and documents) the six minimum required rides each day and to determine what follow-up management actions might be necessary. The Unit supervisor told our auditors that he checks the logs twice each month but offered no documentation to support this statement. We question whether the supervisor ensures that staff members are working as expected, given that logs were filed late, missing, recorded incorrect data, reported employees as not completing their required six rides daily, and failed to report any safety or performance concerns. Those logs should have raised questions regarding the efficacy and the necessity of the Unit.
- The Unit supervisor does not observe Unit employees riding the trains, maintain a phone record of contact with the staff, or compare logs to train schedules to check staff time, attendance, and productivity.
- Neither the Unit supervisor nor staff members prepare a written schedule of the trains to be monitored each day. Unit staff members reportedly determine which trains they will ride, and do not commit this to writing. Given this arrangement, we question whether, and how, the supervisor even knows where, when, or whether Unit employees are working.
- The staff members do not prepare time and attendance records to certify their hours worked, and the supervisor has no independent record to account for the time and attendance of the employees. Instead, at the end of each payroll period, the supervisor prepares a summary record of attendance for all staff, including himself, and then submits this record to the Payroll Office. The supervisor also informed our auditors that he prepares and signs the summary record in advance when he knows that he will be absent.
- Both the Unit supervisor and the staff members acknowledge that there is no way for the supervisor to know when staff members do not show up for work, do not work a full day, or do not ride the required number of trains.

Recommendations

1. Investigate the time and attendance of the Unit supervisor and staff and, in addition to any appropriate disciplinary action, take steps to recover any funds paid for hours, and in some cases, days not worked and not charged to accruals. Ensure that any salary overpayment information is taken into account for future pension payments.
2. Evaluate the necessity of the current level of staffing for the On-Board Services Unit, considering its demonstrated productivity and effectiveness to date. If it is concluded that the Unit is necessary, take steps to make it accountable by addressing each of the weaknesses and questionable activities outlined in the report.

Inappropriate Hiring

Metro-North's operating procedures and New York State's Public Officers Law set forth rules to protect against nepotism, favoritism, and conflicts of interest in the hiring of employees. During our audit, we learned that the Metro-North Assistant Vice President in charge of the Unit had referred a relative to work in the Unit. Given this apparent conflict, we reviewed the hiring and supervision of this particular employee.

In 2003, the Metro-North created the position of On-Board Service Manager for the On-Board Services Unit. At its creation, the written job description for this position required applicants to possess knowledge of Metro-North train operations and revenue-collection policies. Applicants were also required to have at least three years of experience in a transportation operations capacity. Just prior to July 30, 2008, when a staff position in the Unit became vacant, Metro-North revised the job description so that it no longer required the applicant to have knowledge of Metro-North train operations or revenue-collection policies. The experience requirement was also expanded to include new dimensions relating to customer service.

Metro-North posted the announcement for filling the vacancy on July 30, 2008, with an application filing deadline of September 2, 2008. According to Metro-North human resources staff involved in the hiring process for that vacant position, the Assistant Vice President in charge of the Unit had sent them an email, prior to the application deadline, requesting they look out for the application of a highly-recommended individual. The email did not disclose that the particular applicant was also a relative of the Assistant Vice President. During the hiring process, neither the applicant nor the Assistant Vice President disclosed that they were relatives.

Other applicants also sought the same job, but the person who was selected for the position—the Assistant Vice President's relative—received a lower rating than two of the other applicants. This individual was offered and accepted the job at a salary of \$84,700, which was posted as the pay scale for this position even though the starting salary at the time was \$57,226. Unlike the other On Board Service Managers, the selected candidate was also assigned an office. The two other applicants, who received higher ratings, were offered, and accepted, other Metro-North positions with similar pay.

The Public Officers Law contains strict rules intended to prevent favoritism and nepotism or the appearance of such. As amended in 2007, Public Officers Law Section 73(14)(a) provides: "No statewide elected official, state officer or employee, member of the legislature or legislative employee may participate in any decision to hire, promote, discipline or discharge a relative for any compensated position at, for or within any state agency, public authority or the legislature."

Additionally, the ethical standards applicable to MTA employees pursuant to Public Officers Law Section 74(3) provides that a public official "should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person" and that such official "should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in

violation of his trust.”

It appears that the Assistant Vice President’s actions may be a violation of the Public Officers Law. In addition, our random unannounced floor check of selected Unit staff found that, instead of riding the trains as required, the related employee was in the assigned office.

In their initial response to our findings and concerns, Metro-North officials stated that in 2009 their Counsel conducted an investigation into this matter. They noted that the Assistant Vice President had been given three separate reprimands and that operating procedures for the employment of relatives and the avoidance of nepotism were revised to prohibit an employee from working in the same line of supervision as a relative unless approved in writing by the Vice President of Human Resources and unless it was determined that no real or potential conflict of interest was created.

We were provided with a summary of Metro-North’s investigation. Metro North’s Deputy Counsel reiterated the railroad’s confidence in its internal findings; however, we were unable to assess the quality and reliability of this internal examination because Metro-North refused to provide us with a copy of the actual records of its investigation. Notably, while Metro-North’s summary strongly denies that the Assistant Vice President’s relative was given preferential treatment in hiring or that the qualifications for the position were changed to accommodate the relative, the railroad concedes that one member of the three-member panel who interviewed the applicants was actually aware that a relative of the Unit’s Assistant Vice President was being considered for hire. It appears that Metro-North never considered potential Public Officers Law implications. Given Metro-North’s refusal to provide its actual file on this investigation, and the other findings of this report, we have referred these matters to the MTA Inspector General — an independent agency created by statute to investigate “alleged abuses, frauds and service deficiencies” within the MTA that is granted “full and unrestricted access” to all Metro-North records. We will continue to work cooperatively with the MTA Inspector General.

Recommendation

3. Re-examine whether the Assistant Vice President’s relative should be transferred to a different work unit.

Audit Scope and Methodology

This audit is part of a series of forensic audits of the MTA. Our audit objective was to determine whether On-Board Service Managers are actually working the hours for which they are paid. Our audit scope was January 1, 2009, through June 30, 2011.

To accomplish our objective, we interviewed relevant MTA and Metro-North officials and staff, and performed on-site observations of selected staff. We reviewed and analyzed a sample of logs

covering trips made during the period October 1, 2010, through May 1, 2011. We also analyzed staff time and attendance records, leave charges, staff correspondence with the Unit's supervisor, and computer usage records.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits.

Authority

We performed this audit pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

Reporting Requirements

We have provided a draft copy of this report to MTA and Metro-North officials for their review and comment. Their comments have been considered in preparing this final report and are attached in their entirety at the end of the report.

In general, MTA and Metro-North officials agree with our findings and have already begun to implement our recommendations.

Within 90 days of the final release of this report, the Chairman of the Metropolitan Transportation Authority shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

Contributors to This Report

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Vision

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Agency Comments

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Joseph J. Lhota
Chairman and Chief Executive Officer



Metropolitan Transportation Authority

State of New York

May 25, 2012

Mr. Frank Patone, Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

Re: MTA Metro-North Railroad's Payments to On-Board Service Managers #2011-S-35

Dear Mr. Patone:

This is in reply to your letter requesting a response to the above-referenced draft audit report.

I have attached for your information the comments of Mr. Howard Permut, President, MTA Metro-North Railroad, which address your report.

Sincerely,

A handwritten signature in black ink that reads "Joseph J. Lhota".

Joseph J. Lhota

Attachment

The agencies of the MTA

MTA New York City Transit
MTA Long Island Rail Road

MTA Long Island Bus
MTA Metro-North Railroad

MTA Bridges and Tunnels
MTA Capital Construction

MTA Bus Company

347 Madison Avenue
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Howard Permut
President



May 23, 2012

Mr. Joseph J. Lhota
Chairman and Chief Executive Officer
Metropolitan Transportation Authority
347 Madison Avenue, 7th Floor
New York, NY 10017

**RE: MTA Metro-North Railroad Forensic Audit of Payments to On-Board Services Managers
(2011-S-35)**

Dear Chairman Lhota:

We have received the above-referenced draft report from the Office of the State Comptroller (OSC). In the report, OSC identifies two major issues with respect to the performance and staffing of MNR's On-Board Services Unit. The first issue relates to the management, productivity and accountability of the Unit. The second issue deals with what OSC considers to be the inappropriate hiring of one of the Unit's employees. We take these audit findings very seriously and are working to address them both.

The On-Board Services Unit, as such, will be disbanded and its functions and personnel will be reorganized and absorbed into two existing work groups. The auditing functions will become part of the Customer Service and Stations Department, and the managerial and supervisory functions will become part of the Line Superintendent's Unit within the Operations Services Department. Two of the six positions will be abolished. With respect to the employee accountability issue, we have asked the MTA's Office of the Inspector General (OIG) to review the records of the Unit and assist with determining what, if any, actions should be taken.

With respect to the allegations of inappropriate hiring and the OSC's referral of this matter to the OIG, we welcome this review, are cooperating fully, and have provided the OIG with a complete set of documents and records on this matter. Since the hiring of the employee in question in 2008, MNR has strengthened its policies and procedures around the hiring of relatives. Specifically, in 2009, Operating Procedure 21-013, Employment of Relatives/Avoidance of Nepotism was revised to make it clear that both the referring employee and applicant must make full disclosure of family relationships through completing and submitting to Human Resources the "Employee Referral Form" and the "Applicant Relative Disclosure Form." The policy also prohibits the hiring or promotion of a non-agreement employee into a position that is in the direct chain of command of a relative unless an exception is granted in advance by the Vice President of Human Resources.

With respect to the specific recommendations contained in the report, and as required by Section 170 of the Executive Law, MNR has detailed below the actions that have been taken or will soon be taken.

MTA Metro-North Railroad is an agency of the Metropolitan Transportation Authority, State of New York
Joseph J. Lhota, MTA Chairman and Chief Executive Officer

Recommendation 1:

Investigate the time and attendance of the Unit supervisor and staff and, in addition to any appropriate disciplinary action, take steps to recover any funds paid for hours, and in some cases, days not worked and not charged to accruals. Ensure that any salary overpayment information is taken into account for future pension payments.

MNR Response to Recommendation 1:

Employee time and attendance is part of the review being conducted by the OIG at our request. When the OIG's review is completed, we will take appropriate action. It should be noted that this recommendation and the alleged theft of time/services is based on the premise that the sole duty of the On-Board Services Managers is to ride trains, when they do in fact perform other duties as described in our response to Recommendation 2 below.

Recommendation 2:

Evaluate the necessity of the current level of staffing for the On-Board Services Unit, considering its demonstrated productivity and effectiveness to date. If it is concluded that the Unit is necessary, take steps to make it accountable by addressing each of the weaknesses and questionable activities outlined in the report.

MNR Response to Recommendation 2:

We have evaluated the effectiveness of the On-Board Services Unit. We believe that the functions the Unit has been performing are necessary; to improve its overall effectiveness, on June 1st, we will be dividing the Unit's functions and personnel between two existing managerial units and two positions will be abolished. At that point, the Unit as currently organized in the Operations Services Department will be eliminated.

The two important functions the Unit performs are: 1) an auditing function to ensure compliance with procedures and rules that govern the safe and efficient operation of trains by MNR train crews; and 2) a management and supervisory function to instruct or re-instruct train crews on new initiatives and operational improvements. Examples of this second function are: determining the number of open cars on certain off-peak trains; introduction and on-going support of the on-board use of electronic Ticket Issuing Machines (TIMs); and the advancement and achievement of corporate goals including the provision of excellent customer service as well as injury prevention and reduction.

The auditing function of the On-Board Services unit will now become part of the Service Quality Inspection Group (SQ Group), which is a unit in the Customer Service and Stations Department responsible for performing train and station inspections. The SQ Group inspects for station cleanliness, train car cleanliness, functional toilets, and train crew performance among other things. By expanding the duties of the group to include similar responsibilities of the On-Board Services Unit, efficiencies can be realized. In addition, the SQ Inspectors perform their daily train and station inspections using a handheld PDA with results being sent directly to a central database (via wireless connection) and MNR Operations Services Managers (via email) so that problems or safety issues can be noted and corrected almost immediately. Use of this technology by former On-Board Services Unit staff transferred to this unit will eliminate some of the issues raised in the draft report around accountability and timeliness of reporting.

The management and supervisory function of the On-Board Services Unit will now become part of the Operations Services Department's Line Superintendent management structure. Line Superintendents have responsibility for all aspects of the safe and efficient operation of a particular MNR rail line, and so using the role and authority of this existing management structure to carry out

these duties previously performed by the On-Board Services Unit will enable further efficiencies.

Recommendation 3:

Re-examine whether the Assistant Vice President's relative should be transferred to a different work unit.

MNR Response to Recommendation 3:

As part of the reorganization discussed in our response to Recommendation 2, the Assistant Vice President's relative will be transferred to a different work unit outside of the Operations Division. The relative will become part of the Service Quality Inspection Group in the Customer Service and Stations Department and therefore no longer be assigned to the department led by the Assistant Vice President.

If you have any questions or need additional information, please contact me. Thank you.

Sincerely,



Howard Permut

cc: M. Fucilli
R. Lieblong
R. Burney
S. Cummins
D. Evans
N. Gilbertson