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Metropolitan Transportation Authority**
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**Carolyn Pokorny
MTA Inspector General**

November 25, 2020

Via Electronic Mail

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

**Re: Misuse of MTA Vehicle, Bringing
Civilian onto MNR Property, and
Stealing Time
MTA/OIG # 2020-27**

Dear Ms. Rinaldi:

The Office of the MTA Inspector General (OIG) initiated this investigation and found that a Metro-North Railroad (MNR) Machinist ("the Machinist") repeatedly violated MTA and MNR policies from March 2020 through September 2020, including:

- (1) Using his MTA issued vehicle dozens of times for personal purposes;
- (2) Taking extended lunches, which, in some instances, lasted over 2 hours;
- (3) Not properly maintaining his vehicle usage log, which his supervisor and foreman failed to identify; and
- (4) Bringing a woman (the "Female") onto non-public areas of MNR property, for a meeting that involved kissing and intimate contact, while the Machinist was working an overtime shift. It is especially concerning that the Machinist created a safety risk when he brought the Female and her vehicle onto non-public MNR property that was clearly marked "No Entry Except Authorized Vehicles" or "No Parking."

The OIG recommends that the Machinist be disciplined as MNR deems appropriate, up to and including termination. Furthermore, the OIG recommends that MNR counsel the Machinist's supervisor and foreman on the proper review and authorization of vehicle logs. The

Machinist's conduct also appears to violate the New York State Public Officers Law. Accordingly, we are forwarding this matter to the New York State Joint Commission on Public Ethics (JCOPE) for action as it may deem appropriate.

I. BACKGROUND

The Machinist was hired as a Machinist, Maintenance of Way, in 1995, and continues to hold that title. The Machinist is a safety-sensitive employee, meaning that MNR has determined that his position is so fraught with danger, "even a momentary lapse of attention can have disastrous or irremediable consequences to the employee or others."¹ He has spent his MNR career working in assignments that assist with track maintenance. His current assignment includes maintaining track crew equipment, but not the tracks themselves. His work location is the MNR Poughkeepsie Facility, but the Machinist can work anywhere in subdivision 4, which spans the area north of Poughkeepsie to Croton Park. The Machinist's regularly scheduled hours are Mondays through Fridays from 7:30 a.m. to 4:00 p.m. and his regularly scheduled days off are Saturdays and Sundays.

The Machinist was assigned MNR vehicle number 1317 ("the MTA Vehicle"), a yellow Ford truck, since approximately March of 2020.

The Machinist works overtime nearly every single night after working his day shift. Typically, his regular daytime tour ends at approximately 4:00 p.m., and his overtime tour starts at approximately 10:00 p.m.

As detailed below, the OIG frequently observed the Machinist using the MTA Vehicle during his days off, for non-work purposes—specifically, parking his MTA issued vehicle, meeting the Female, and then leaving with her in her vehicle. The OIG confirmed that the Female is not an MTA employee or affiliated with any business with the MTA.

II. INVESTIGATION

A. Record Review and OIG Surveillance

1. *Unauthorized Use of MTA Vehicle*

The OIG's investigation included a review of the Machinist's timekeeping records and Global Positioning System (GPS) records from his assigned MNR vehicle, which were obtained using the Sentinel Fleet Management system,² MNR policies, and OIG surveillances.

¹ See MNR Corporate Policy and Operating Procedure 21-012 Section IV.

² Sentinel Fleet Management ("Sentinel") software is a system installed in MNR vehicles that uses GPS technology to enable time and location-based monitoring and reporting for these vehicles.

a. Personal Use of the MTA Vehicle While Off Duty

The OIG found a frequent pattern of unauthorized vehicle usage by analyzing the Machinist's GPS records against his time records. There were multiple instances when the Machinist was not working but still drove from his home in Putnam Valley to a lot in Peekskill near the intersection of North Water Street and North Main Street ("the Water Street Lot") or to the Hudson Avenue Railroad Crossing and parked the MTA Vehicle at those locations overnight.

There was no business purpose for the Machinist to use the MTA Vehicle on his scheduled days off, as detailed in the 14 occasions below:

1. On April 3, 2020, the Machinist was off duty. Despite this, he drove the MTA Vehicle from his home to an area near the Hudson Avenue Railroad Crossing in Peekskill at approximately 6:05 p.m. where he parked the MTA Vehicle overnight, leaving it the entire next day.
2. On April 4, 2020, the Machinist was off duty and the MTA Vehicle remained parked near the Hudson Avenue Railroad Crossing all day and again overnight.
3. On April 5, 2020, the Machinist was off duty and the MTA Vehicle remained parked near the Hudson Avenue Railroad Crossing all day until 12:30 p.m. when the Machinist drove home. The Machinist remained home for a few hours before driving the MTA Vehicle back to the Hudson Avenue railroad crossing at 5:58 p.m., where he parked the MTA Vehicle overnight until 6:53 a.m. the next day.
4. On April 12, 2020, the Machinist was off duty. Despite this, he drove the MTA Vehicle from his home to the Water Street Lot at 8:04 p.m. where he parked the MTA Vehicle overnight until 4:03 p.m. the next day.
5. On the evening of April 13, 2020, the Machinist was off duty. He drove the MTA Vehicle from the Water Street Lot to his home at approximately 4:03 p.m. He remained at his home for a few hours before driving back to the Water Street Lot at approximately 8:40 p.m., where he parked the MTA Vehicle overnight until 8:17 p.m. the next day.
6. On April 15, 2020, the Machinist was off duty. Despite this, he drove the MTA Vehicle from his home to the Water Street Lot at 7:10 p.m. where he parked the MTA Vehicle overnight until 6:53 p.m. the next day.
7. On April 16, 2020, the Machinist was off duty. Despite this, he drove the MTA Vehicle from the Water Street Lot to his home at 5:53 p.m. He remained at his home for a few hours and then drove back to the Water Street Lot at 9:05 p.m., where he parked the MTA Vehicle overnight until 4:20 p.m. the next day.
8. On April 17, 2020, the Machinist was off duty. Despite this, he drove the MTA Vehicle from the Water Street Lot to his home at approximately 4:20 p.m. He remained at his

home for a few hours and then drove back to the Water Street Lot at 8:36 p.m., where he parked the MTA Vehicle overnight until 12:15 p.m. the next day.

9. On April 18, 2020, the Machinist was off duty. Despite this, he drove the MTA Vehicle from the Water Street Lot to his home at 12:15 p.m. He remained home until evening and then drove back to the Water Street Lot at 8:53 p.m., where he parked the MTA Vehicle overnight until 12:18 p.m. the next day.
10. On April 19, 2020, the Machinist was off duty. Despite this, he drove the MTA Vehicle from the Water Street Lot to his home at 12:18 p.m. He remained home until evening and then drove back to the Water Street Lot at 7:52 p.m., where he parked the MTA Vehicle overnight until 7:20 a.m. the next day.
11. On June 20, 2020, the Machinist was off duty. Despite this, he drove the MTA Vehicle from the Water Street Lot to his home at 10:29 a.m. He remained home overnight until 7:26 p.m. the next day.
12. On June 21, 2020, the Machinist was off duty. Despite this, he drove the MTA Vehicle from his home to the Water Street Lot at 7:26 p.m., where he parked the MTA Vehicle overnight until 6:15 a.m. the next day.
13. On July 4, 2020, the Machinist was off duty. Despite this, he drove the MTA Vehicle from the Water Street Lot to his home at 11:07 a.m. He remained home overnight until 7:11 p.m. the next day.
14. On July 5, 2020 the Machinist was off duty. Despite this, he drove the MTA Vehicle from his home to the Water Street Lot at 7:11 p.m. where he parked the MTA Vehicle overnight until 6:18 a.m. the next day.

Moreover, in addition to the overnight parking detailed above, the Machinist parked the MTA Vehicle overnight in the Water Street Lot approximately 18 more times, all while off duty.³ A chart of these 18 instances is attached as Appendix A.

b. Personal Use of the MTA Vehicle to Make an Additional Stop Between Shifts

The GPS records also revealed another pattern of unauthorized vehicle usage, in that the Machinist frequently parked the MTA Vehicle in the Water Street Lot between his regularly scheduled daytime tour and his nighttime overtime tour. MTA vehicle usage policy restricts any personal use of MTA-assigned vehicles and requires commuting to occur by the “most direct route possible.”⁴ Based on this policy, the OIG would expect the Machinist’s GPS records to show that he drove the vehicle directly to and from work. In contrast, the Machinist’s GPS

³ These instances of overnight parking in the Water Street Lot differ from those detailed in Section 1(3) above, in that they are either directly before or after the Machinist worked.

⁴ See MTA All Agency Policy Directive 11-037 Assignment and Use of Official Vehicles Section C(1) and Section D(7).

records showed that he made an additional stop in Peekskill on his way to and from work nearly every single day. The Machinist was not working in Peekskill for his daytime tour or his overtime tour and therefore, the additional stops deviated from the “most direct route possible” and also appear to be unrelated to MTA official business.

GPS records revealed that the Machinist frequently drove the MTA Vehicle home after his daytime tour to spend a few hours at home. In the evening, he would drive the MTA Vehicle to his overtime tour, and he would usually make an additional stop. The additional stop consisted of driving the MTA Vehicle to the Water Street Lot and parking there for approximately 2 to 3 hours. The OIG found that the Machinist followed this pattern nearly every night, parking the MTA Vehicle in the Water Street Lot in the evening hours between the two tours approximately 48 times between March 2020 and July 2020. A chart of these instances is attached as Appendix B.

c. Personal Use of the MTA Vehicle to Meet with the Female

During the OIG’s surveillance of the Machinist, the OIG observed the Machinist parking the MTA Vehicle in the Water Street Lot in Peekskill in the evening to meet with the Female. The Machinist would then enter a Nissan Pathfinder registered to the Female (“the Pathfinder”) and drive away. The OIG observed this conduct on the following 4 dates: May 28, June 1, September 3, and September 17, 2020, all around 7:00 p.m. GPS records show that the Machinist would then return to the MTA Vehicle approximately 2 to 3 hours later to drive the MTA Vehicle to work at his overtime work location. Notably, the Machinist was not working in Peekskill on any of these dates.

The OIG also observed the Machinist returning in the Pathfinder to the parked MTA Vehicle in the Water Street Lot at approximately 9:00 p.m. on the following 9 dates: May 20, May 21, June 3, June 4, June 10, June 11 and June 25, September 3, and September 17, 2020. Notably, the Machinist was not working in Peekskill on any of these dates.

The OIG observed an additional instance of the Machinist using the MTA Vehicle for personal purposes. On July 14, 2020, the OIG observed the Machinist leaving his work location at approximately 3:55 p.m., driving to a shopping center parking lot and then meeting with a man. The Machinist then drove the MTA Vehicle while the man drove his own car to another location that appeared to be a building under renovation. They spoke for approximately 15 minutes before the Machinist drove the MTA Vehicle home.

2. *Bringing the Female onto MNR Property while Working*

The OIG observed the Machinist bringing the Female onto non-public MNR property on 3 separate occasions, into areas that clearly were marked “No Entry Except Authorized Vehicles” or “No Parking.” On one of those occasions, on May 16, 2020, while the Machinist was on an overtime shift, he and the Female appeared to have intimate contact in an MNR storage yard. On 2 other dates, the OIG observed the Machinist and the Female meeting on MNR property. These 3 instances are detailed below.

- a. On May 16, 2020, between 11:38 a.m. and 12:56 p.m., while the Machinist was working overtime, OIG investigators observed the Machinist and the Female appearing to kiss and have intimate contact on MNR property, in a clearly marked MNR non-public Storage Yard. The meeting occurred at the Metro North Harmon East Yard Maintenance of Way Storage Facility located off the Senasqua Road service road in Croton on Harmon. The Machinist and the Female stood outside their parked vehicles, behind the open door of the Pathfinder, which was parked approximately 10 to 15 feet from the tracks inside a fenced yard with a sign posted in the public area outside the yard that clearly reads “No Entry Except Authorized Vehicles.” To enter the Metro North Harmon East Yard, the Machinist and the Female would have had to pass another posted sign that clearly reads “No Entry Except Authorized Vehicle.” The GPS records confirm that the MTA Vehicle was parked in this location from approximately 11:38 a.m. to 12:55 p.m.
- b. On May 29, 2020, at approximately 1:09 p.m., the OIG again observed the Machinist meeting with the Female inside the same Metro North Harmon East Yard Maintenance of Way Storage Facility located in Croton on Harmon while on duty. The Machinist and the Female were seen having lunch together. The MTA Vehicle and the Pathfinder were parked approximately 10 to 15 feet from the tracks. The GPS records show that the MTA Vehicle was parked in this location from approximately 12:38 p.m. to 1:35 p.m.
- c. On June 25, 2020, the OIG observed the Machinist meeting with the Female on the side of the MNR Manitou Station while on duty. The MTA Vehicle and an Audi sedan registered to the Female were parked on a non-public gravel road behind the tracks directly in front of a sign that reads “No Parking.” The gravel road leads to a locked gate which then leads to the northbound right of way. The 2 met approximately 10 to 15 feet behind the operating track. The GPS indicates that the meeting occurred from approximately 12:56 p.m. to approximately 1:42 p.m.

3. *Time Stealing*

The Machinist is allotted a 30-minute, unpaid lunchbreak during his regular shift. If working overtime, the lunchbreak period is defined as a “reasonable amount of time.”⁵ The Machinist was observed exceeding the half hour allotted for his lunch break during his regular shift, on occasion, to meet with the Female as detailed above. The OIG observed the Machinist exceeding his allotted 30-minute lunch break on 6 occasions. The chart below details these occurrences. Unless otherwise noted, all lunchtime overages were observed by the OIG which totaled 402 minutes (almost 7 hours).

⁵ See Agreement Between MTA Metro-North Commuter Railroad and Its Employees Represented by the International Association of Machinists and Aerospace Workers p. 22 and p. 29.

Date:	Day:	Scheduled Lunch Break:	Description of Lunch Break Taken:	Overage:
5/4/2020	Monday	.5 hours	GPS revealed lunch at Water Street Lot from 12:29 p.m. to 1:26 p.m.	27 minutes
5/6/2020	Wednesday	.5 hours	Lunch at Annsville Creek Preserve park from 12:14 p.m. to 1:38 p.m.	54 minutes
5/7/2020	Thursday	.5 hours	Lunch with the Female at Water Street Lot from 11:36 a.m. to 12:47 p.m. Departed job site at 10:57 am, returned to Poughkeepsie job site at 1:35 pm.	188 minutes
5/27/2020	Wednesday	.5 hours	Conducted personal business at Poughkeepsie Nissan from 11:55 a.m. to 12:43 p.m. Left job in Poughkeepsie at 11:30 am and returned to jobsite in Poughkeepsie at 1:02 p.m.	62 minutes
5/29/2020	Friday	.5 hours	Lunch with the Female in Maintenance of Way Harmon East Yard Maintenance of Way Storage Facility Yard from 12:38 p.m. to 1:34 p.m.	26 minutes
6/10/2020	Wednesday	.5 hours	Left worksite with Female at 12:54 p.m. Returned to MTA Vehicle at 2:09 p.m.	45 minutes

4. *Failure to Maintain Vehicle Log and to Complete Personally Assigned Vehicle Annual Survey*

The Machinist did not properly fill out his vehicle usage logs for the months of March 2020 through September 2020. For each of these months, the Machinist only filled out the column for “Start.” The columns for “End,” “Business” and “Commutation” are all left blank.⁶ The multi-leg trips and instances of parking in the Water Street Lot are not noted in the log. Despite this, the logs are signed by the Machinist’s supervisor.

MNR employees with take-home MNR vehicles are also required to complete a Permanently Assigned Vehicle (PAV) Survey online annually. The survey asks questions about the employee’s usage of the take-home vehicle. MNR documents indicate that the Machinist was sent the PAV survey by email on September 11, 2020, and informed that he must complete it by September 14, 2020. However, the Machinist did not complete the PAV survey but still maintains custody of the vehicle.

⁶ See Machinist’s MTA Vehicle Usage Logs March through September 2020.

B. Interviews of MNR Employees

1. *Unauthorized Use of MTA Vehicle*

a. The Machinist

In his OIG interview in October 2020, the Machinist acknowledged that he frequently left the MTA Vehicle parked in the Water Street Lot. The Machinist stated that at the start of the Covid-19 pandemic, he stopped entering his home for the safety of a family member with a health condition. He claimed that he would park the MTA Vehicle in the Water Street Lot to be picked up by a friend, who would then take him to their home to shower or rest for a few hours.

However, the OIG found his account to be dishonest based on the OIG's analysis of the Machinist's GPS records. As detailed above, the Machinist's GPS showed that he parked the vehicle at his home overnight 2 times in April 2020 which belies his statement that he stopped entering his home during the Covid-19 pandemic. More importantly, the records also showed that the Machinist began making an additional stop to park his MNR assigned vehicle for a few hours in the evening as early as August 2019, long before the Covid-19 pandemic reached New York in or about March 2020.⁷ Beginning in August 2019, the Machinist would park the car for a few hours in the evening between his daytime tour and his overtime tour, primarily parking the car near the Hudson Avenue railroad crossing in Peekskill. In approximately April 2020, the Machinist began parking in the Water Street Lot, following the same pattern.

When asked if he understood that his MNR take-home vehicle was not to be used for personal purposes other than commuting, the Machinist claimed that had "never seen anything in writing" and that he had been told repeatedly over the years that it was alright to make stops along his route home, and that he could leave the MTA Vehicle parked anywhere "on or near" MNR property.

The Machinist stated that he had never seen any MNR policies or procedures detailing vehicle usage, that he had never been trained on the appropriate use of his MTA Vehicle, and that he did not recall his annual training ever containing a section on the use of his take-home vehicle.

In direct contrast to the Machinist's statements, the OIG obtained a document the Machinist signed confirming he attended live training session on the vehicle policy. The document confirms that a MNR "M of W Safety Stand-down" training was conducted on February 24, 2020, at 8:00 a.m. in the North White Plains shop. One of the topics on the agenda is "Review Assignment and Use of Official Vehicles Policy 11-037." The Machinist signed the sign-in sheet, indicating that he attended the training. Moreover, the Machinist's Assistant Director confirmed that these trainings occur annually, and that MTA All Agency Policy Directive 11-037 Assignment and Use of Official Vehicles is a covered topic. Additionally, the

⁷ The Machinist was issued the MNR vehicle tagged as 1317M in March 2020. Prior to that, he was issued the MNR vehicle tagged as 1390M.

Machinist completed regularly scheduled MTA training on topics including the MTA Code of Ethics and rules regarding the use of state resources.

When asked who told him that he could leave the MTA Vehicle parked “on or near” MNR property, the Machinist responded that he had been told this numerous times by various supervisors over the years, including his foreman (“the Foreman”), his manager (“the Manager”), the Supervisor of his group (“the Supervisor”), and the Assistant Director of his group (“the Assistant Director”).

The Machinist further stated that MNR vehicles frequently park in the Water Street Lot as it is directly adjacent to the tracks and there is a locked gate in the lot that leads to the tracks. Based on this, the Machinist insisted that the Water Street Lot is MNR property and that there is no issue with leaving the MTA Vehicle parked there, even overnight.

b. The Foreman

In his OIG interview, the Foreman stated that he understood that take-home vehicles could be used only for commuting but did not know which policy specifically governed vehicle usage. The Foreman said that the Machinist had asked him for permission to park in Peekskill at the start of the pandemic and that he granted it, based on his understanding that the Machinist could not enter his home due to a family member’s condition.

However, the Foreman stated that he did not give permission for the Machinist to park in the Water Street Lot on a daily basis. Rather, the Foreman thought that the Machinist only parked near the Peekskill station a few times when the Machinist was working near Peekskill. The Foreman was not aware that the Machinist parked in the Water Street Lot nearly every night, regardless of his work location that day, or in some cases when he was not even working. The Foreman stated unequivocally that any use of the MTA Vehicle when the Machinist was not working is prohibited.

c. The Manager of Equipment

The Manager’s full title is Manager of Equipment, and he works out of the North White Plains office. In his OIG interview, the stated that he was familiar with MTA All-Agency Policy 11-037 and knew that the MTA Vehicle could not be used for any personal business, rather, the MTA Vehicle could only be used to commute to and from work. However, the Manager stated that if the Machinist was traveling to and from work, it would be acceptable to park the MTA Vehicle in Peekskill “on MNR property,” as long as the stop was on the most direct route to work.

The Manager stated that he did not give the Machinist permission to park in the Water Street Lot in advance. Rather, the Machinist had only asked for permission in October 2020 shortly after OIG notified the Machinist that they wished to interview him. The Manager did grant permission, but only based on the Machinist’s assertions that the Machinist was not deviating on his route to or from work or using the MTA Vehicle while off duty. The Manager

explained to the OIG that any deviation from the most direct route possible or any use of the MTA Vehicle while off duty is prohibited.

d. The Supervisor of Work Equipment

The Supervisor's full title is Supervisor of Work Equipment, and he also works out of North White Plains. In his OIG interview, the Supervisor stated that he was familiar with MTA All Agency Directive 11-037 and understand the language "most direct route possible" to mean that stops were not permitted unless brief and essential. He did not think daily stops at the Water Street Lot were permissible, even if it were the case that a portion of the Water Street Lot is technically MNR property. The Supervisor stated that a take home vehicle is to be driven to and from work. The Supervisor stated that he had not spoken with the Machinist at any time about parking in the Water Street Lot.

e. The Assistant Director of Work Equipment Group

The Assistant Director's full title is Assistant Director of Work Equipment Group, and he also works out of North White Plains. Consistent with to the Supervisor, in his OIG interview, the Assistant Director stated that it would not be acceptable for the MTA Vehicle to be parked in the Water Street Lot approximately 25 times a month. He also stated that if not at the Machinist's home, the MTA Vehicle would need to be left on MNR property. When asked if he was familiar with the Water Street Lot, the Supervisor stated that he was, and that he did not think that it was MNR property, particularly as the signage did not appear to be MNR signage. The Assistant Director stated that he did not give the Machinist permission at any time to park in the Water Street Lot and would not have done so had the Machinist asked.

2. *Bringing the Female onto MNR Property while Working*

In his OIG interview, the Machinist stated that he frequently met the Female for lunch or dinner while working, on MNR property, in public areas. He stated that he did not recall the Female ever being inside non-public MNR property, such as an MNR yard. When specifically asked, the Machinist stated that he did not engage in any "inappropriate behavior" with any female on MNR property.

The Machinist also stated that he had never seen anything in writing stating that he could not have visitors on the yard, and that he has never seen anything in writing stating that he cannot have visitors on MNR property, and further that he has never been told that he cannot be "intimate" with someone during lunch on MNR property. He also stated that he has seen numerous family members enter MNR property over the years for retirement parties.

In contrast, the Foreman stated that there would be no circumstances under which a civilian could enter MNR property. He stated that he has not seen policies governing who can access MNR property but that he understood that civilians cannot enter for "any reason." When asked if he has received training on track safety the Foreman stated that every employee who will be on or near the tracks must receive track training annually and that safety is covered. He also stated that the Machinist is required to take the same training. When asked if he has ever

seen civilians enter the yard for a retirement party the Foreman stated that if civilians had been attending a party on MNR property, they would need MNR permission in advance.

The Supervisor and Assistant Director both stated that a civilian would not be allowed on MNR property under any circumstances without advance permission.

3. *Time Stealing*

In his OIG interview, the Machinist stated that he is permitted a half hour for lunch. He denied that he exceeded the time permitted for lunch during his regular tour. Similarly, the Foreman stated that a half hour is allotted for lunch, and that he did not believe that the Machinist was exceeding that half hour because they check in regularly throughout the day. When asked if it is permissible to conduct personal business on lunch, the Foreman stated not while using the MTA Vehicle, because no personal business can be conducted using it.

However, the Machinist was not being truthful to the OIG as the OIG observed the Machinist exceeding his lunch break 6 times between March 2020 and September 2020, totaling approximately 402 minutes.

Similarly, the Manager, Supervisor, and Assistant Director all confirmed that on a regular tour, an unpaid half-hour is given for lunch, and that while it would be acceptable to have lunch with a friend on public property, it would not be permissible to extend the half hour to do so.

4. *Failure to Maintain Vehicle Log and to Complete Personally Assigned Vehicle Annual Survey*

The Machinist's vehicle usage logs were not filled out properly for the period of March through September 2020. For this period, the columns for "End," "Business" and "Commutation" are left blank and the Machinist consistently only filled out the column for "Start." Still, the logs were accepted this way and collected by the Supervisor.

The Machinist told the OIG that he filled out his vehicle log as he was supposed to and turned them in on time. However, the vehicle logs obtained by the OIG showed that the Machinist barely made any effort to fill out the vehicle logs. The Supervisor stated that he had repeatedly pointed out the incomplete forms to the Foreman but the errors were not rectified. However, the Supervisor noted that the forms that the automotive department provides do not have a space for multi-leg trips.

When asked why he did not complete the mandated annual Permanently Assigned Vehicle (PAV) survey, the Machinist responded that he did not know how to check his email and that he "was hired as a Machinist and not an electronics technician." When asked why he did not use his MNR-issued phone to check his MNR email the Machinist stated that he does not know how to do so.

The Manager and the Assistant Director confirmed that they have machinists who do not utilize their MNR email, and that there is no requirement that the machinists check their email.

III. POLICIES AND ANALYSIS

A. MTA All-Agency Policy Directive 11-037: Assignment and Use of Official Vehicles

The MTA All Agency Policy Directive 11-037 (Policy) Assignment and Use of Official Vehicles Section (C)(1) restricts the use of MTA vehicles to performance of Official Business and also states that use for any personal purpose is strictly forbidden. Each person operating an MTA vehicle is expected to exercise good judgment to avoid the appearance of impropriety. Further, Section (D)(7) of the Policy states that travel should be by the most direct route possible.

Section F(1) of the Policy regulates stops while commuting in MTA issued vehicles, and references the New York State Vehicle Use Policy (State Vehicle Use Policy) which provides in pertinent part, that a brief stop in the State issued vehicle for necessary items like bread or milk would be permissible. However, a stop at an outlet mall would be prohibited, because the stop is not brief, nor is it for necessary items of sustenance. *See* State Vehicle Use Policy Section E Example 4.

Section F(1) of the Policy also requires the maintenance and review of vehicle use logs, and states that any person using an MTA vehicle must record dates and times of use, driver and occupants of the vehicle, starting location and destination, purpose of the trip, and starting and ending odometer readings. Additionally, multi-leg trips should be recorded separately. Section F(4) further states that the logs should be collected and reviewed by a supervisor on a regular basis.

Section B(4) of the Policy also requires agencies to annually review permanent assignments of MTA vehicles and to submit a letter to the Chairman/CEO setting forth the reasons for the assignment and the details of the assigned vehicle. MNR collects data to comply with this mandate by requiring employees with take-home vehicles to complete an annual Permanently Assigned Vehicle (PAV) Survey.

Here, the Machinist frequently violated the Policy when the Machinist was repeatedly observed using the MTA Vehicle for personal use while he was off duty to facilitate meeting with the Female, rather than using the MTA Vehicle as a means of traveling to and from work as strictly mandated by the Policy. Additionally, he violated the Policy by not commuting to work using the “most direct route possible.” Rather, the Machinist made an additional stop nearly every single day, parking the MTA Vehicle in the Water Street Lot and leaving it parked for hours, including overnight.

The Machinist’s near daily parking in the Water Street Lot also violates the Policy because the stops are not brief, nor are they for necessary items of sustenance. Rather, the Machinist makes an additional stop on his route and parks in the Water Street Lot for hours nearly every night to facilitate meeting with the Female. His excuse that he was not aware of

any policies is belied by the fact that he attended and signed the stand down training sheet which included the review the of the vehicle policy.

The Machinist also disregarded MTA and MNR policy by turning in incomplete vehicle usage logs for the period spanning March 2020 through September 2020. Rather than detailing the necessary information, the Machinist's vehicle usage logs only listed the starting odometer reading each day. Even if the logs did not provide for multi-leg trips, he did not fill in any other of the required information.

The Machinist's foreman and supervisor both accepted the incomplete vehicle usage logs.

Similarly, despite being informed that the PAV Survey is mandatory, the Machinist did not complete the survey by the deadline and has not completed it as of this writing. His excuse that his is unable to check his MNR email is not credible.

B. MTA All-Agency Code of Ethics

1. § 8.04 Prohibition Against the Use of MTA Property

The MTA All-Agency Code of Ethics, Section 8.04, provides in pertinent part, that the MTA's resources may not be utilized for non-governmental purposes, including for personal purposes or for outside activities of any kind.

Here, the Machinist repeatedly violated MTA policy by using his MTA vehicle, over 15 times, to facilitate meeting the Female, even going so far as to leave the MTA Vehicle parked overnight in the Water Street Lot when he is off duty.

2. § 1.07 Cooperation

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, among others. Failure to so cooperate will subject an Employee to appropriate disciplinary penalty, up to and including dismissal.

Here, the Machinist failed to cooperate fully and honestly with an OIG investigation. In fact, he lied during his interview with the OIG. The Machinist stated that he began driving the MTA Vehicle to the Water Street Lot and parking there on his way to his overtime tour in the evenings during the Covid-19 pandemic, claiming that he could not enter his home due to his wife having an autoimmune condition. However, GPS records reveal that the Machinist began his practice of parking the MTA Vehicle for a few hours in the evening as far back at August 2019. He primarily parked in a location near the Hudson Avenue Railroad Crossing, but the parking followed the same pattern of parking for a few hours in the evening and sometimes overnight. The Machinist lied about never knowing about the restrictions on PAV. The Machinist also lied about his supervisors giving him permission to park in the Water Street Lot or misrepresented the scope of that permission. He only sought permission right before he was to be interviewed by the OIG to ensure that he had a valid excuse during the OIG interview.

3. *§ 4.02: Public Trust*

The MTA All-Agency Code of Ethics, Section 4.02, states, in pertinent part, that employees shall not engage in a course of conduct that will raise suspicion among the public that they are likely to be engaged in acts that are in violation of the public trust.

Here, the Machinist flaunted MTA and MNR policies when he used the MTA Vehicle for personal use and engaged in an intimate encounter with the Female on MNR property while clocked in and working overtime. On any of the occasions that the MTA Vehicle was left unattended and particularly overnight, the MTA Vehicle could have been stolen or damaged.

B. MTAHQ Policy and Procedure, Attendance and Leave

Section V, subsection (H) states, in pertinent part, “All regular and part-time employees must report their time worked and any absences to be charged against leave balances...”

The Machinist falsely reported his time worked by extending his lunches and failing to charge that time against his leave balances.

C. MNR Corporate Policy and Operating Procedure 02-004: Metro-North Railroad Pass Issuance Program

MNR Corporate Policy and Operating Procedure 02-004 explains the procedures for non-employees to gain access to MNR facilities. A person would need to submit a pass application to MNR in advance to gain access to an MNR facility and a spouse or dependent would not be granted pass privileges.

Here, the Female would not have been given access to access non-public MNR facilities and the Machinist inappropriately facilitated her access for personal purposes.

D. New York State Public Officers Law

1. *§ 74(3)(d)*

New York State Public Officers Law (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 herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the state for private business or other compensated nongovernmental purposes.

Here, the Machinist used his official position to secure unwarranted privileges for himself when he misappropriated the MTA vehicle for his personal use.

2. § 74(3)(h)

New York State Public Officers Law § 74(3)(h) states, in pertinent part, that an officer or employee of a state agency, member of the legislature or legislative employee 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 Section 4.02, the Machinist engaged in acts that violated his trust.

IV. FINDINGS

1. The Machinist frequently violated the MTA All Agency Policy Directive 11-037 and Public Officers Law § 74(3)(d) and (h) by misusing his MTA Vehicle, both using it for personal purposes other than commuting and leaving it parked in unsecured locations for long periods.
2. A safety risk was created when the Machinist brought the Female onto non-public MNR property and engaged in intimate contact with her, approximately 10 or 15 feet from the tracks.
3. The Machinist submitted false work hours by extending his lunches in violation of MTAHQ Policy and Procedure, Attendance and Leave, Section V(H). As a result, he was paid for time (almost 7 hours) he did not work.
4. The Machinist violated the MTA All Agency Code of Ethics §§ 4.02 and 8.04 by using his MTA Vehicle to facilitate meeting the Female, and by misusing his MNR pass to bring the Female onto MNR non-public facilities for meetings, including a meeting that appeared romantic in nature.
5. The Machinist violated MNR Corporate Policy and Operating Procedure 02-004 by bringing the Female onto non-public MNR property without a pass and when she had no legitimate purpose for being there.
6. The Machinist violated MTA All Agency Policy Directive 11-037 by failing to maintain his vehicle usage log appropriately and failing to complete his 2020 PAV survey.
7. The Foreman and Supervisor failed to ensure that the vehicle usage log was completed properly.
8. The Machinist violated MTA All Agency Code of Ethics § 1.07 by dishonestly answering questions the OIG posed about his MNR issued vehicle usage.

V. RECOMMENDATIONS

1. The Machinist should be disciplined, as the MNR deems appropriate, up to and including termination.
2. The Foreman and Supervisor should be counseled on proper review and authorization of vehicle usage logs.

As always, we appreciate your continued courtesy and cooperation. Please advise our office within 30 days of any action you intend to take and the result of any action taken. 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: Susan Sarch, Acting General Counsel, MNR
Andrew J. Paul, Vice President Labor Relations, MNR
Monica Stamm, General Counsel, NYS Joint Commission on Public Ethics

Appendix A: Additional Overnight Parking of the MTA Vehicle in the Water Street Lot

Date:	Day:	Details:
4/11/2020	Sat	1317M parked overnight in N. Water St. Lot, Peekskill, from 7:18 p.m. on 4/11/20 to 11:20 a.m. on 4/12/20 while off duty.
4/23/2020	Thur	1317M parked overnight in N. Water St. Lot, Peekskill, from 8:13 pm. on 4/23/20 to 7:13 a.m. on 4/24/20 while off duty.
4/25/2020	Sat	1317M parked overnight in N. Water St. Lot, Peekskill, from 7:45 p.m. on 4/25/20 to 1:16 p.m. on 4/26/20 while off duty.
4/29/2020	Wed	1317M parked overnight in N. Water St. Lot, Peekskill, from 7:42 p.m. on 4/29/20 to 8:08 a.m. on 4/30/20 while off duty.
5/2/2020	Sat	1317M parked overnight in N. Water St. Lot, Peekskill, from 7:05 p.m. on 5/2/20 to 6:46 a.m. on 5/3/20 while off duty.
5/15/2020	Fri	1317M parked overnight in N. Water St. Lot, Peekskill, from 8:50 p.m. on 5/15/20 to 6:48 a.m. on 5/16/20 while off duty.
5/16/2020	Sat	1317M parked overnight in N. Water St. Lot, Peekskill, from 8:33 p.m. on 5/16/20 to 7:40 a.m. on 5/17/20 while off duty.
5/23/2020	Sat	1317M parked overnight in N. Water St. Lot, Peekskill, from 7:48 p.m. on 5/23/20 to 9:33 a.m. on 5/24/20, while off duty.
5/28/2020	Thur	1317M parked overnight in N. Water St. Lot, Peekskill, from 7:35 p.m. on 5/28/20 to 7:21 a.m. on 5/29/20 while off duty.
5/30/2020	Sat	1317M parked overnight in N. Water St. Lot, Peekskill, from 7:14 p.m. on 5/30/20 to 7:02 a.m. on 5/31/20 while off duty.
6/5/2020	Fri	1317M parked overnight in N. Water St. Lot, Peekskill, from 7:39 p.m. on 6/5/20 to 4:58 a.m. on 6/6/20 while off duty.
6/6/2020	Sat	1317M parked overnight in N. Water St. Lot, Peekskill, from 7:55 p.m. on 6/6/20 to 5:11 a.m. on 6/7/20 while off duty.
6/7/2020	Sun	1317M parked overnight in N. Water St. Lot, Peekskill, from 5:40 p.m. on 6/7/20 to 6:21 a.m. on 6/8/20 while off duty.
6/13/2020	Sat	1317M parked overnight in N. Water St. Lot, Peekskill, from 6:46 p.m. on 6/13/20 to 5:08 a.m. on 6/14/20 while off duty.
6/19/2020	Fri	1317M parked overnight in N. Water St. Lot, Peekskill, from 6:52 a.m. on 6/19/20 to 10:29 a.m. on 6/20/20 while off duty.
6/30/2020	Tues	1317M parked overnight in N. Water St. Lot, Peekskill, from 7:10 p.m. on 6/30/20 to 6:04 a.m. on 7/1/20 while off duty.
7/3/2020	Fri	1317M parked overnight in N. Water St. Lot, Peekskill, from 6:41 p.m. on 7/3/20 to 11:07 a.m. on 7/4/20 while off duty.
7/5/2020	Sun	1317M parked overnight in N. Water St. Lot, Peekskill, from 7:22 p.m. on 7/5/20 to 6:18 a.m. on 7/6/20 while off duty.

Appendix B: Additional Stops with the MTA Vehicle Parking in Water Street Lot

Date:	Day:	Details:
4/8/2020	Wed	1317M parked in N. Water St. Lot, Peekskill, from 6:25 to 9:42 p.m., while off duty.
4/9/2020	Thur	1317M parked in N. Water St. Lot, Peekskill, from 4:04 to 9:34 p.m., while off duty.
4/20/2020	Mon	1317M parked in N. Water St. Lot, Peekskill, from 7:33 to 9:33 p.m., while off duty.
4/21/2020	Tues	1317M parked in N. Water St. Lot, Peekskill, from 6:40 to 9:23PM, while off duty.
4/22/2020	Wed	1317M parked in N. Water St. Lot, Peekskill, from 7:12 to 9:38 p.m., while off duty.
4/24/2020	Fri	1317M parked in N. Water St. Lot, Peekskill, from 7:53 to 9:46 p.m., while off duty.
4/27/2020	Mon	1317M parked in N. Water St. Lot, Peekskill, from 4:05 to 9:47 p.m., while off duty.
4/28/2020	Tues	1317M parked in N. Water St. Lot, Peekskill, from 7:35 to 9:40 p.m., while off duty.
4/30/2020	Thurs	1317M parked in N. Water St. Lot, Peekskill from 7:36 to 9:24 p.m., while off duty.
5/1/2020	Fri	1317M parked in N. Water St. Lot, Peekskill, from 7:42 to 9:37 p.m., while off duty.
5/4/2020	Mon	1317M parked in N. Water St. Lot, Peekskill, from 8:04 to 9:36 p.m., while off duty.
5/5/2020	Tues	1317M parked in N. Water St. Lot, Peekskill, from 8:05 to 9:20 p.m., while off duty.
5/7/2020	Thur	1317M parked in N. Water St. Lot, Peekskill, from 7:45 to 9:34 p.m., while off duty.
5/8/2020	Fri	1317 parked in N. Water St. Lot, Peekskill, from 7:48 to 9:48 p.m., while off duty.
5/17/2020	Sun	1317M parked in N. Water St Lot., Peekskill, from 7:41 to 10:37 p.m., while off duty.
5/18/2020	Mon	1317M parked in N. Water St. Lot, Peekskill, from 7:59 to 9:42 p.m., while off duty.
5/19/2020	Tues	1317M parked in N. Water St. Lot, Peekskill, from 8:24 to 9:52 p.m., while off duty.
5/20/2020	Wed	1317M parked in N. Water St. Lot, Peekskill, from 8:19 to 9:37 p.m., while off duty.
5/21/2020	Thur	1317M parked in N. Water St. Lot, Peekskill, from 6:54 to 9:46 p.m., while off duty.

Date:	Day:	Details:
5/25/2020	Mon	1317M parked in N. Water St. Lot, Peekskill, from 7:46 to 10:38 p.m., while off duty.
5/26/2020	Tues	1317M parked in N. Water St. Lot, Peekskill, from 7:34 to 9:43 p.m., while off duty.
5/27/2020	Wed	1317M parked in N. Water St. Lot, Peekskill, 7:32 to 9:41 p.m., while off duty.
5/29/2020	Fri	1317M parked in N. Water St. Lot, Peekskill, from 7:05 to 9:35 p.m., while off duty.
5/31/2020	Sun	1317M parked in N. Water St. Lot, Peekskill, from 7:48 to 9:42 p.m., while off duty.
6/1/2020	Mon	1317M parked in N. Water St. Lot, Peekskill, from 7:33 to 9:13 p.m., while off duty.
6/2/2020	Tues	1317M parked in N. Water St. Lot, Peekskill, from 7:12 to 9:37 p.m., while off duty.
6/3/2020	Wed	1317M parked in N. Water St. Lot, Peekskill, from 7:38 to 9:32 p.m., while off duty.
6/4/2020	Thur	1317M parked in N. Water St. Lot, Peekskill, from 7:02 to 9:41 p.m., while off duty.
6/8/2020	Mon	1317M parked in N. Water St. Lot, Peekskill, from 4:49 to 9:42 p.m., while off duty.
6/9/2020	Tues	1317M parked in N. Water St. Lot, Peekskill, from 7:42 to 9:19 p.m., while off duty.
6/10/2020	Wed	1317M parked in N. Water St. Lot, Peekskill, from 7:21 to 9:28 p.m., while off duty.
6/11/2020	Thur	1317M parked in N. Water St. Lot, Peekskill, from 7:17 to 9:29 p.m., while off duty.
6/12/2020	Fri	1317M parked in N. Water St. Lot, Peekskill, from 7:27 to 9:35 p.m., while off duty.
6/14/2020	Sun	1317M parked in N. Water St. Lot, Peekskill, from 7:07 to 9:25 p.m., while off duty.
6/15/2020	Mon	1317M parked in N. Water St. Lot, Peekskill, from 7:30 to 9:41 p.m., while off duty.
6/16/2020	Tues	1317M parked in N. Water St. Lot, Peekskill, from 7:28 to 9:25 p.m., while off duty.
6/18/2020	Thur	1317M parked in N. Water St. Lot, Peekskill, from 7:14 to 9:26 p.m., while off duty.
6/22/2020	Mon	1317M parked in N. Water St. Lot, Peekskill, from 7:48 to 9:27 p.m., while off duty.

Date:	Day:	Details:
6/23/2020	Tues	1317M parked in N. Water St. Lot, Peekskill, from 7:42 to 9:16 p.m., while off duty.
6/24/2020	Wed	1317M parked in N. Water St. Lot, Peekskill, from 7:32 to 9:21 p.m., while off duty.
6/25/2020	Thur	1317M parked in N. Water St. Lot, Peekskill, from 7:35 to 9:25 p.m., while off duty.
6/27/2020	Sat	1317M parked in N. Water St. Lot, Peekskill, from 7:05 a.m. to 10:29 a.m., while off duty.
6/28/2020	Sun	1317M parked in N. Water St. Lot, Peekskill, from 6:18 a.m. to 9:34 p.m., while off duty.
7/2/2020	Thur	1317M parked in N. Water St. Lot, Peekskill, from 7:34 to 9:23 p.m., while off duty.
7/6/2020	Mon	1317M parked in N. Water St. Lot, Peekskill, from 7:35 to 9:20 p.m., while off duty.
7/7/2020	Tues	1317M parked in N. Water St. Lot, Peekskill, from 7:21 to 9:10 p.m., while off duty.
9/3/2020	Thurs	1317M parked in N. Water St. Lot, Peekskill, from 7:35 to 9:12 p.m., while off duty.
9/17/2020	Thurs	1317M parked in N. Water St. Lot, Peekskill, from 7:13 to 9:06 p.m., while off duty.



Carolyn Pokorny
MTA Inspector General

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Agency Response
to
MTA/OIG #2020-27

Misuse of MTA Vehicle, Bringing Civilian onto MNR Property, and Stealing Time

This constitutes a summary of the Agency Response to MTA/OIG #2020-27. On November 25, 2020, in response to the Office of the MTA Inspector General (OIG) investigation and report, Metro-North Railroad (MNR) removed the Machinist from service and suspended him without pay. On December 3, 2020, MNR instituted disciplinary charges against the Machinist. On January 20, 2021, immediately following the OIG's testimonies at his disciplinary hearing, the Machinist resigned, effective the same day. As a condition of that resignation, MNR required the Machinist to acknowledge that he is ineligible for future employment with MNR. Additionally, MNR is in the process of recouping 402 minutes of wages from the Machinist's final payout.

Further, MNR counseled the Foreman and the Supervisor on proper usage and maintenance of the vehicle usage logs. The MTA Board of Directors recently approved a new All-Agency contract for a new vendor for Global Positioning System (GPS) monitoring technology for all agency vehicles including MNR's, and MNR is looking to obtain improved functionality, including real-time data monitoring through the new vendor.