



Metropolitan Transportation Authority

State of New York

June 21, 2016

Ms. Carmen Maldonado
Audit Director
The Office of the State Comptroller
Division of State Government Accountability
59 Maiden Lane, 21st Floor
New York, NY 10038

Re: Final Report #2015-F-14 (Forensic Audit of Select Payroll and Overtime Practices and Related Transactions)

Dear Ms. Maldonado:

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

I have attached for your information the comments of Joseph J. Giulietti, President, Metro-North Railroad, which address this report.

Sincerely,

A handwritten signature in blue ink, appearing to read "T.F. Prendergast", with a horizontal line extending to the left and a vertical line extending downwards from the end.

Thomas F. Prendergast
Chairman and Chief Executive Officer

C: Donna M. Evans
MTA Chief of Staff

Attachments



June 13, 2016

Mr. Thomas F. Prendergast
Chairman and Chief Executive Officer
Metropolitan Transportation Authority
2 Broadway, 20th Floor
New York, NY 10004

Re: Response to the Follow-up Audit (2015-F-14) of MTA Metro-North Railroad Forensic Audit of Select Payroll and Overtime Practices and Related Transactions (2010-S-60)

Dear Chairman Prendergast:

The Office of the State Comptroller (OSC) audit team performed a follow-up audit to the Forensic Audit of Select Payroll and Overtime Practices and Related Transactions issued on November 9, 2011. Metro-North Railroad (MNR) had taken a series of actions based on the six original audit recommendations. OSC auditors reviewed the status of these actions, and issued follow-up recommendations. MNR's required response for each follow-up recommendation is detailed below.

It is important to reiterate that MNR's position on the application of the Federal Hours of Service (HOS) Law has not changed since the initial audit report was issued. Based on past practice and the priority we place on running a safe railroad, we will continue to pay HOS payments to supervisors who are scheduled to oversee work covered by HOS provisions.

As the latest FRA Technical Bulletin S-14-01 (Guidance Regarding Federal Hours of Service Laws, Hours of Service Recordkeeping and Reporting Regulations, and Signal Covered Service) states, "An employee who performs any function that has the potential to affect the proper and safe operation of a signal system is subject to the HS laws during the particular duty period in which the function is performed, without regard to the class or craft of the employee or the manner in which the employee is compensated, if at all." The intent of the HOS Law is to ensure the safety of railroad workers and the customers we serve.

Original Recommendation 1 (from Report 2010-S-60):

Study the cost benefit and feasibility of rearranging signal workers' schedules (e.g., a night shift) so that unnecessary overtime pay is stopped.

Recommendation 1 Follow-up Status (from Report 2015-F14):

Status - Implemented

Agency Action – Metro-North prepared a document entitled "Signal Construction Business Process Review" that studied the cost benefit and feasibility of rearranging signal workers' schedules so that unnecessary overtime is stopped. The document contains several proposed methods for reducing overtime and Hours of Service payments by adding work shifts. However, none of these changes had been implemented at the time of our follow-up review, as they are subject to processes for collective bargaining agreements.

MNR Response to Recommendation 1 Follow-up Status:

MNR is in agreement that this recommendation is implemented. MNR continues to pursue increased scheduling flexibility to allow us to add shifts and personnel where we deem them to be most efficient. To date, MNR has not been successful in achieving these changes through the collective bargaining process.

Original Recommendation 2 (from Report 2010-S-60):

Discontinue Hours of Service payments and related premium pay for employees who are not entitled to it.

Recommendation 2 Follow-up Status (from Report 2015-F14):

Status - Partially Implemented

Agency Action – An official from Metro-North's Communication and Signals Department state that any employee working on approved tasks whose rest period coincides with his or her regularly scheduled hours will be eligible for Hours of Service payments.

We requested overtime approval forms for 12 pay periods during calendar years 2013, 2014 and 2015. However, Metro-North officials could only provide overtime approval forms for four pay periods in 2015. This conflicts with Metro-North's record retention policy, which requires such files to be maintained for seven years. At the closing conference, Metro-North officials stated they were following the federal record retention requirement of two years.

Based on the forms provided, we reviewed six Hours of Service charges from 2015 and determined that there was no evidence to show that the tasks performed by the employees qualified under the Statute. However, subsequent to the start of our follow-up review, Metro-North modified its overtime pre-approval form to include a line for pre-approval of Hours of Service work, which will help ensure that only employees who are entitled to Hours of Service payments receive it. MTA officials provided us with a copy of the new form at the review's closing conference.

MNR Response to Recommendation 2 Follow Up Status:

MNR does not believe HOS payments or overtime payments are being made to employees who are not entitled to the payments, but going forward MNR is now using the modified overtime pre-approval form which includes a line for pre-approval of HOS work. MNR is also reviewing the current Federal and New York State record retention requirements in order to reconcile the record retention issues raised by the follow-up audit.

Original Recommendation 3 (from Report 2010-S-60):

Investigate the inappropriate payments and take appropriate corrective action, including disciplinary action, recovery of payments and adjusting pension benefits.

Recommendation 3 Follow-up Status (from Report 2015-F14):

Status – Not Implemented

MNR Response to Recommendation 3 Follow Up Status:

MNR does not believe any additional discipline or recovery of payments should be pursued.

Original Recommendation 4 (from Report 2010-S-60):

Clarify and communicate, as appropriate, which employees are entitled to compensation for Hours of Service and which are not.

Recommendation 4 Follow-up Status (from Report 2015-F14):

Status – Not Implemented

Agency Action – MTA's 90 day response to our initial audit stated that the overtime approval form is an ongoing record of who is entitled to Hours of Service payments. However, the overtime approval form does not indicate which specific employees are entitled to compensation for Hours of Service. When we requested additional documentation that clarified which employees were entitled to compensation for Hours of Service, we were directed to the Statute, which does not identify the specific employees eligible for such compensation.

MNR Response to Recommendation 4 Follow Up Status:

MNR's position is that all Signal employees who work in the field are potentially eligible for HOS payments. This is consistent with the FRA Technical Bulletin cited above. As discussed with OSC auditors, identifying the specific employees who will receive HOS payments ahead of time is difficult, due to the changing nature of signal construction and maintenance work done on overtime. For example, a certain weekend job may require 6 signal employees, but the specific employees who end up working this job is determined by seniority, availability and willingness to work overtime as dictated by the collective bargaining agreements. By the time the work happens, the employees who are scheduled to do this work may change based on individual employee availability and schedules. However, controls are in place in the Maintenance of Way timekeeping process to prevent inaccurate HOS payments from being made to employees who are not entitled to the payments. Only employees with the appropriate union codes based on their Signal positions can receive HOS payments.

Original Recommendation 5 (from Report 2010-S-60):

Adhere to payroll controls that are designated to provide checks and balances such as reconciling all exceptions between KRONOS and manual attendance records.

Recommendation 5 Follow-up Status (from Report 2015-F14):

Status - Partially Implemented

Agency Action – Metro-North’s Maintenance of Way Timekeeping Procedures state that exception reports must include the time of a missed clock punch, an acceptable reason for the lack of a punch, and an authorized signature on the resulting exception report. We reviewed timekeeping records for 54 employees and found that the required reconciliation was generally performed. However, in four instances, the exception reports did not have authorized signatures, and in one of these four instances, the reason for the lack of a time clock punch was missing.

Also, officials provided us with a copy of a report issued by MTA Audit Services on an audit of the KRONOS timekeeping system’s access controls, which was conducted after full system implementation. Further, Audit Services officials provided us with the documentation indicating that all three of their report’s recommendations were implemented.

MNR Response to Recommendation 5 Follow Up Status:

MNR has a defined process and requirement for missed KRONOS clock swipes and exception reports. Maintenance of Way timekeeping staff strive to achieve 100% compliance with this requirement. Given the volume of Maintenance of Way timekeeping activity processed each week, there will likely be a small number of instances where incomplete exception reports can be processed undetected.

Original Recommendation 6 (from Report 2010-S-60):

Immediately discontinue the practice of supervisors signing attendance records for themselves and determine whether other corrective action or disciplinary action is warranted.

Recommendation 6 Follow-up Status (from Report 2015-F14):

Status – Implemented

Agency Action – Metro-North’s current Maintenance of Way Timekeeping Procedures state that supervisors’ timesheets must be signed by managers. We met with seven timekeepers, and all of them possessed a copy of these procedures. In addition we reviewed a judgmental sample of 42 supervisors’ timesheets from the 2013, 2014 and 2015 calendar years and found that all of the timesheets were signed by managers.

MNR Response to Recommendation 6 Follow Up Status:

MNR is in agreement that this recommendation is implemented and has no further comments related to this recommendation.

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

Sincerely,



Joseph J. Giuliatti

cc: M. Fucilli
R. Agritelley
R. Gans
G. Hayden
K. Porcelain
C. Rinaldi
A. Santini
J. Deptulski
N. Gilbertson