

OFFICE OF EXECUTIVE INSPECTOR GENERAL
FOR THE AGENCIES OF THE ILLINOIS GOVERNOR

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FOR IMMEDIATE RELEASE

July 28, 2014

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Two OEIG Investigations of Metra Misconduct Disclosed
Falsified Federal Logs and Ethics Training Misconduct Revealed

Chicago: Today, Executive Inspector General Ricardo Meza discussed the public disclosure of two OEIG investigations of wrongdoing involving Metra. In the first matter, “despite Metra’s multiple requests to not publicly release the OEIG Final Report in the *In re: Metra Managers and Staff* investigation, we are pleased that the Executive Ethics Commission has decided to release the report, which under the current ethics laws, it was not obligated to release because Metra imposed no discipline against any employee which would have been sufficient to trigger the mandatory release,” stated EIG Meza.

In the *In re: Metra Managers and Staff* investigation, the OEIG discovered that a long-standing Metra employee practice called “change of assignment” resulted in the falsification of Federal Railroad Administration hours of service logs, which are necessarily completed for the safety of travelers and employees by ensuring employees limit their hours of service. This practice, which even current **Metra Executive Director Don Orseno** was fully aware of and which numerous Metra employees conveniently referred to as “swapping,” was not really an exchange of job assignments but rather was a practice that allowed Metra conductors or engineers to take a day off work (usually Saturdays). Then, inexplicably, some employees who *did not* work completed their hours of service logs as if they *did work* while others who *did work* *did not* complete their hours of service logs.

“Metra’s long-standing unfettered practice directly resulted in the falsification of federally mandated hours of service logs,” stated EIG Meza. He continued, “accurate log keeping is not simply an administrative ritual or completion of paperwork - it is required to ensure public safety, pure and simple.”

“Although we do not doubt that passenger safety is clearly paramount to Metra,” said Deputy Inspector General and Chief Fallon Opperman, whose OEIG Regional Transit Board Division led the investigation, “Metra’s widespread swapping practice rendered federally required hours of service log records simply unreliable.”

As a result of its investigation, the OEIG recommended that Metra:

- ensure that employees file accurate hours of service logs;
- end the change in assignment (swapping) practice, even in emergencies;
- discipline all employees found to have improperly completed their logs; and
- take appropriate action with regard to senior Metra managers.

The OEIG also referred the matter to the Federal Railroad Administration. “Thankfully, Metra’s unfettered swapping practice is over but regardless, our investigators will continue to review matters as necessary,” said Deputy Chief of the Regional Transit Board Division Dr. Brandon Myers. In addition to OEIG staff identified in this release, OEIG Investigator Carl Weaver served as lead investigator in this matter.

A copy of the redacted OEIG Final Report, as well as the Federal Railroad Administration close-out letter and related letter from Administrator Joseph C. Szabo relating to this investigation are attached to this release and available on our website.

* * *

The other OEIG investigation of Metra, namely, *In re: Lt. Laith El-Talabani* involved various members of Metra’s Police Department. In this investigation, the OEIG found that Metra Police Department **Lt. Laith El-Talabani** completed mandatory online ethics training for four other Metra police officers in contravention of the Ethics Act.

During the investigation, **Lt. Laith El-Talabani** unabashedly told OEIG investigators that “no one wants to complete an ethics training,” yet in Illinois, annual ethics training is required to ensure ethical conduct among *all* State employees, including Metra police officers.

“OEIG Assistant Inspector General Daniel Ostrovsky and Investigator Luis Salinas lead the investigation in this matter,” stated Deputy Inspector General and Chief Fallon Opperman.

About the Office of Executive Inspector General for Agencies under the Illinois Governor:

The OEIG was created by the State Officials and Employees Ethics Act (5 ILCS 430). The OEIG receives, evaluates, and investigates allegations of fraud, waste, abuse, mismanagement, misconduct, and violations of the Ethics Act, the 1990 US Supreme Court *Rutan* ruling, and other laws. Please visit our website at: www.inspectorgeneral.illinois.gov.



U.S. Department
of Transportation

**Federal Railroad
Administration**

Region IV

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For the Agencies of the Illinois Governor
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Re: OEIG Case No. 11-01032 – Referral to FRA

Dear Mr. Meza,

This letter is in response to your March 5, 2014, referral of the Office of Executive Inspector General for the Agencies of the Illinois Governor (OEIG) Case No. 11-01032. This case was an investigation conducted by your office regarding certain practices which occurred on the Northeast Illinois Regional Commuter Rail Corporation (Metra). The Federal Railroad Administration (FRA) has completed its review of the information provided by your office and has determined violations of Federal regulations did occur in connection with this case.

Upon receipt of your March 5th letter, the attached final report and supporting documentation, this office assigned two FRA Region 4 Operating Practices Inspectors to review this information. Their investigation was strictly limited to determine if any Federal laws or regulations under the jurisdiction of the FRA were violated based on the evidence provided by your office. The applicable FRA area related to this case was compliance with the Hours of Service Law (HSL) and Federal regulations regarding Hours of Service (HOS) recordkeeping.

To begin, a brief explanation regarding FRA's enforcement regime related to both the HSL and HOS record keeping requirements is necessary. In 2011, limitations on the hours of duty a Metra covered service employee could work were governed by Title 49 United States Code Chapter 211–Hours of Service, specifically § 21103, as exempted by

the Rail Safety Improvement Act of 2008¹. In accordance with authority under 49 USC 21303(b)(2), FRA may only initiate civil action up to two years for HSL infractions. HOS recordkeeping is required by Title 49 Code of Federal Regulation (CFR) Part 228, an FRA regulation. The statute of limitation on enforcement of FRA regulations is for a period of five years.

Understanding our limitations with respect to enforcement, our inspectors did review the documentation provided for potential instances of excessive service, but mainly focused on compliance with FRA HOS recordkeeping requirements found under 49 CFR Part 228. The inspectors discovered one possible instance where a swap assignment had potential to exceed HSL limitations. Based on an employee HOS record, when matched with the assumed train scheduled arrival time and the job assignment period, the total time on-duty for the employee would have exceeded HSL limitations (12 hours of on duty time) by 11 minutes. Further review of Metra documentation regarding this potential excessive service case, revealed that the swap (as indicated on the Metra “Weekend MED Change in Assignment” form) never occur and the subject employee only work his original job assignment for that day. Therefore FRA was unable to discover any cases of potential excessive service related to the information provided by your office.

During our review, FRA inspectors did discover several instances of non-compliance with Federal regulations related to 49 CFR Part 228 – Hours of Service Railroad Employees; Record Keeping and Reporting; Sleeping Quarters. A summary of these instances of non-compliance is provided below:

- Two (2) instances of incorrect information on records (no assignment number/ failure to list total time on-duty²)
- Seven (7) instances of incorrect HOS documentation for a duty tour. Employees recorded HOS information when they didn't work (complete omissions).
- Twelve (12) instances of incorrect HOS documentation for a duty tour. Employees failed to record parts of covered service duty tour or showed working parts of assignment they did not work (partial omissions).

¹ RSIA 2008 specifically exempted passenger operations from new the requirements published in the Law until FRA could issue regulations under its authority. Therefore between the implementation dates found in RSIA 2008 and October 15, 2011, Hours of Service Laws governing passenger operations remained as they were published prior to implementation of RSIA 2008.

² The improper documentation of total time on-duty was listed as an “FRA defect” and will not be recommended for the assessment of civil penalties. The related record was also associated with omission of covered service information and the agency will recommend civil penalties under this more serious non-compliance.

- Twenty-five (25) instances of incorrect HOS documentation for a duty tour. Employees work for others, but did record HOS information (complete omission).

As a result of the information provided by OEIG, this office will forward to FRA's Office of Chief Counsel recommendations for the assessment of civil penalties against Metra for these infractions (45 total). Additionally, this office will be moving forward with issuing individual liability actions (FRA Regional Warning Letters) against specific Metra employees who failed to accurately complete required HOS records discovered during our review (31 Total).

On May 1st, 2014, Metra was informed of these instances of non-compliance via official FRA inspection reports. On May 5th, 2014, FRA met with Metra to discuss, in general terms, these findings³. An additional topic of this meeting was related to the potential of Metra transitioning to a fully electronic HOS recordkeeping system (per 49 Part 228-Subpart D). FRA has found that electronic HOS recordkeeping systems greatly improve the accuracy and reliability of HOS records. Built-in system checks and programing logic can provided an added level of assurance that omissions, whether deliberate or simple oversights, can be avoided when employees record HOS information. Moving forward, FRA will continue discussions with Metra regarding transitioning to an electronic HOS recordkeeping system.

Again, I would like to thank you for forwarding your investigation report and the supporting documentation to the FRA. If I can provide any additional information on the case please feel free to contact me.

Sincerely,



Michael T. Long
Regional Administrator – Region 4
Federal Railroad Administration

³ This meeting was general in nature and specific details of events were not discussed or debated. This meeting was not part of any official enforcement proceeding related to settlement of violation recommendations. Those proceeding will be handled accordingly by FRA Office of Chief Counsel at a future date.



U.S. Department
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JUL -9 2014

Mr. Ricardo Meza
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Dear Mr. Meza:

Thank you for your June 13, 2014, letter to the Federal Railroad Administration (FRA) regarding the regional investigation of “job swapping” on the Metra system. I appreciate your providing FRA the investigation report and supporting evidence related to your office’s 2011 investigation. As detailed in the regional close-out letter, several instances of noncompliance were discovered by FRA. We are currently pursuing civil penalties against Metra and issuing first step individual liabilities to employees for these infractions.

In your letter, you discussed the possibility of an expanded review of Metra’s hours of service logs and reports. FRA is currently conducting a 45-day safety assessment of Metra in light of several recent high-profile operating incidents. The agency is focusing this effort on specific operational issues, reviewing implementation of required Federal programs, and generally assessing the overall safety culture of Metra’s operating department. Although this assessment is specifically focused, inspectors will generally review Metra’s compliance in other areas, including hours of service reporting. This review is in addition to the agency’s continuous compliance checks with hours and service laws and recordkeeping regulations. This oversight includes reviewing required monthly excessive service reporting forms, conducting unannounced inspections of documents and records, as well as conducting specific or general recordkeeping audits within the context of our inspection protocols.

Thank you and your office again for forwarding your investigative findings and supporting documents. If you have any additional questions or concerns, please contact Mr. Michael Long, FRA Regional Administrator, at (312) 353-6203 or Michael.Long@dot.gov.

Sincerely,



Joseph C. Szabo
Administrator