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FOREWORD

MTA – New York City Transit’s primary mission is to provide safe, reliable and economical transportation to the public. When employees fail to comply with Transit’s rules, policies and procedures, their behavior/conduct affects the organization’s ability to carry out its mission.

Discipline is a management tool, which is used to correct volatile employee behavior that would interfere with or impact adversely on the efficient and safe operation of the New York City Transit System.

The MTA New York City Transit disciplinary program endeavors to attain uniform, corrective and progressive application.

The information contained in this manual was obtained from several sources, including, but not limited to, the Rules and Regulations Governing Employees Engaged in the Operation of the New York City Transit System, Resolutions and Policies of the Authority, Civil Service Law, and contractual agreements between the Authority and the labor organizations that represent its employees.

Questions that may arise from the information contained in this manual should be directed to the Labor Disputes Resolution Section of MTA New York City Transit’s Office of Labor Relations or the Director of Labor Relations for your division.

PURPOSE

The purpose of this manual is to assist in the training of managers, supervisors and employees who are responsible for the processing of discipline and to ensure uniform procedural application of discipline.

PROGRESSIVE DISCIPLINE

(all employees except TWU-Local 100 represented)

Employee discipline is defined as the action that management takes to respond to an employee's errant conduct that disrupts safe and efficient operation within the work environment. Used properly, it can help to improve employee performance and maintain order in the workplace.

At MTA New York City Transit, the purpose of progressive discipline is to modify certain employee behavior by imposing a series of progressive penalties for minor rule infractions. Applying progressive discipline in a clear and appropriate manner will indicate to employees that they are being treated fairly and consistently.

Except for TWU-Local 100 represented employees, progressive penalties for more minor infractions should be imposed without regard to the type of offense (i.e., minor time and leave infractions, minor shortages, minor compliance issues, and the like). Of course, significant infractions (i.e., theft, violent behavior, major operating violations, fraud and the like) do not lend themselves to progressive discipline and termination in the first instance may be appropriate.

PROGRESSIVE DISCIPLINE (TWU, Local 100)

Effective July 1, 1997, New York City Transit and the Transport Workers Union, Local 100, have agreed to a modified progressive discipline system for TWU, Local 100-represented employees.

Progressive discipline is applied on a category-by-category basis.

All employees required to have a Commercial Driver's License (CDL) are governed by a three category disciplinary system as follows:

- Time and Attendance Violations
- Safety Related Violations
- Job Performance and Other Violations

All employees not required to have a CDL are governed by a two category disciplinary system as follows:

- Time and Attendance Violations
- Job Performance and Other Violations

When a rule infraction occurs, a penalty is recommended according to the category of that violation. The penalty in each of the above categories is based only on prior violations within the category in which the rule infraction occurred. There is no overlap of discipline between categories.

- Within each disciplinary category as set forth above, penalties are evaluated in accordance with the principle of progressive discipline and as further elaborated in the arbitration award dated January 26, 1995. The instant agreement does not modify an employee's disciplinary record prior to July 1, 1997.

- Time and attendance cases are processed through the same arbitration procedures utilized for sick leave and differential cases in MTA-New York City Transit after the Step II hearing where the recommended penalty is a 10-day suspension or less.
- If a time and attendance case is settled at the pre-arbitration steps of the grievance procedure, the penalty appears on the employee's record for purposes of progressive discipline but no suspension time is imposed, and no fine is paid.

Please note:

- The disciplinary procedures are designed to permit employees who commit minor violations the opportunity to improve their disciplinary record when more than one year has passed since the date of their last violation. In addition, some flexibility may be permissible in assessing penalties for some major/serious violations where a minimum of 5-7 years has passed since the last major/serious violation.

Effective March 1, 2000, employees may improve their disciplinary record for certain minor violations subject to the following time schedule.

Time of Next Minor Violation	Penalty to be Assessed for Next Minor Violation
Additional minor violation within 1 year of last violation	Follow progressive discipline
Between 1 year and 1 ½ years from the date of the last violation	Repeat last penalty*
Between 1. ½ years and 2 years from the date of the last violation	½ of last penalty*
Between 2 and 2 ½ years from the date of the last violation	¼ of last penalty*
Between 2 ½ and 3 years from the date of the last violation	1/8 of last penalty*
After 3 years from the date of the last violation	Employee's record of minor violations will not be considered when assessing the next minor violation

- Where the penalty to be assessed is less than a one day suspension, a reprimand will be substituted.
- All minor violations will follow these progressive discipline principles.
- An employee's movement from a position, which requires a CDL to one that does not require a CDL does not nullify prior discipline in any category.

For all Time and Attendance cases:

Arbitration will be expedited for all cases involving minor violations where the recommended penalty is a 10 day suspension or less (for TA only)

Incentive program for settling cases at the pre-arbitration steps (penalty is on the record without the suspension or fine).

For employees with time and attendance cases with recommended penalty of dismissal the employee shall not be pre-disciplinary suspended with the exception of those cases involving fraud.

PREVENTING UNNECESSARY DISCIPLINE

The manager or supervisor should attempt to run his/her division or unit in such a manner that disciplinary action need not be taken. The supervisor must work to develop a climate in which rule violations are minimized. The following are some suggestions on how to establish such a climate:

- Have a thorough knowledge of the rules and regulations and the reasons behind them.
- Be certain that all supervised employees know and understand the rules and regulations.
- Communicate to the employee why observance of the rules and regulations is in his/her best interest.
- Instruct all supervised employees in the proper and appropriate work methods and procedures.
- Give simple, clear, understandable orders.
- Be as consistent as possible with all employees in similar work situations
- Attempt to correct unacceptable employee behavior before the employee has to be disciplined. The responsible supervisor will attempt to reinstruct the employee when the supervisor observes that a problem may arise in the future.
- Supervisors should follow any reinstruction, counseling session or verbal warning with a memorandum to the employee and the employee's personnel file.

DEPARTMENTAL ("COMMAND") DISCIPLINE

Department managers or supervisors may meet with an employee and his/her union representative and agree upon a penalty of a warning, reprimand, or "record only" suspension up to five days for minor violations. No formal charges are issued, but the agreed penalty is recorded as a warning, reprimand or suspension time on the employee's disciplinary record. In addition, departmental management may choose to limit the discipline to a verbal reprimand, which is not recorded. The employee may reject the proposed penalty and follow the formal disciplinary process.

If the employee has only one departmental discipline penalty such penalty is not considered part of progressive discipline.

A warning or reprimand is expunged after twelve months if the employee has no other discipline in his or her record.

WRITING DISCIPLINARY CHARGES

The first step in commencing the disciplinary process is the writing of the charges. Disciplinary charges must be as specific and thorough as possible including:

- The specific rules, regulations, bulletins or policies that have allegedly been violated.
- The facts which support the conclusion that the rules, regulations and/or policies have been violated.
- The recommended penalty.

The disciplinary charges must put the employee on notice of all alleged violations in order that the employee may appropriately defend him/herself. In order to write specific and accurate charges, the supervisor/manager must thoroughly investigate the matter. Inaccurate, poorly written charges, or incorrect penalty assessments may prejudice and undermine management's entire case.

PREPARING FOR THE DISCIPLINARY HEARING

In order to adequately prepare for the disciplinary hearing, the management representative must gather all relevant information to present at the hearing. The information must include:

- Any written reports from witnesses, supervisors, and the grievant taken at the time of the incident or subsequent to the incident. Any MTA New York City Transit reports or records which support the charges or which establish the facts that are important to the case: i.e. time cards, logs, work assignment sheets, statements made at the time of an incident, etc.
- Testimony which demonstrates that the employee was aware of the rules and regulations and that management has consistently enforced those rules and regulations.
- A copy of the employee's disciplinary record.

THE DISCIPLINARY HEARING

If the employee does not accept the discipline recommended by management, he/she can appeal the recommendation pursuant to the applicable collective bargaining agreement. Disciplinary grievances and hearings must be processed and held in accordance with the time limitations set forth in the appropriate collective bargaining agreement. Employees not covered by a collective bargaining agreement may be entitled to a hearing pursuant to the Civil Service Law if they have Civil Service status. Please refer to individual sections on procedures to be followed, which are discussed beginning on page 26, herein.

Management has the burden of proof to establish that a rule has been violated and must present its case first. At the disciplinary hearing, Management will communicate the charges, present all relevant evidence in support of the charges and recommend a penalty.

After management has presented its case, the employee and/or his/her representative shall have the opportunity to present whatever evidence they believe is necessary to answer or dispute the disciplinary charges.

The Hearing Officer should take written notes of the disciplinary hearing that reflect both management's and the employee's positions as presented at the hearing. These notes are confidential and are a part of management's case file.

In the event that the matter is not resolved at a Divisional or Office of Labor Relations Step, then the matter will proceed to arbitration or to OATH, where the employee and Union will have an opportunity to present witnesses and/or evidence to support his/her claim, and to cross examine MTA-New York City Transit witnesses.

TYPES OF VIOLATIONS

TIME AND LEAVE

New York City Transit's primary mission is to provide safe, reliable and economical transportation to the public. An employee's failure to report for duty as required or abuse of sick leave affects the organization's ability to carry out its mission.

Sick Leave

Transit grants eligible employees twelve (12) paid sick leave days per year when the employee is unfit for work on account of illness or non-service connected disability and has sufficient sick leave credits in his/her accumulated bank to cover the absence. Unused earned sick time can be carried over from one year to the next.

Sick Leave is appropriate when an employee is:

- unfit for work on account of an illness
- unfit for work on account of a non-service connected disability

Sick Leave is inappropriate when an employee:

- attends a routine medical/dental examination which is non-disabling
- goes to a pharmacy to obtain medication
- goes to an optician to obtain eyeglasses
- cares for family members who are sick (certain exceptions apply to Managers & Confidential Secretaries)
- utilizes sick leave to conduct personal business

In order to be eligible for Sick Leave, an employee must follow certain requirements:

- Employee must notify Transit of his/her intention to be absent at least one (1) hour prior to the employee's start of their tour of duty. (Some Departments/Divisions require more than one hour's notice.)
- Notice must include the nature of the illness, anticipated duration of the absence and the full address and phone number of the location where the employee can be reached during the absence.
- During the absence, the employee must notify Transit of all changes of sick location (leaving and returning). Excessive time spent away from sick leave location is unacceptable.
- For all sick absences, a Sick Leave Application must be submitted within three (3) days of return to work. If the absence was for more than two (2) days, the Sick Leave Application must be submitted containing medical documentation certifying the illness and dates of incapacity. (See Appendix A). For employees on the Sick Leave Control List, medical documentation is required regardless of the length of absence.

Transit utilizes the following methods for controlling chronic, fraudulent, excessive or unwarranted sick leave:

- Sick leave location investigations to determine whether employee is at the reported sick leave location.
- Review and verification of medical documentation submitted by employee.
- Investigation of documentation containing discrepancies and/or irregularities
- Review sick leave absences of more than thirty (30) days duration
- Sick Leave Counseling & placement on Sick Leave Control List, if appropriate.
- Monitoring for patterns of fraud and/or abuse
- Investigation of physicians providing unsatisfactory or questionable medical documentation
- See page for sample charges.

** 70/30 list – 70 % of TA employees, those with a percentage of days available in their sick leave bank proportionate the maximum possible of all TA employees (as adjusted annually) will be excluded from the following requirements:

- No requirement to call in or out from sick location.
- No requirement to medically document an absence of three days or less.
- Not subject to home visits or sick leave location investigations.
- Only applies to employees who have passed probation and worked one full leave year.
- It should be noted that an employee in the bottom 30% based on the percentage of his or her maximum possible sick leave balance available may not necessarily be on the Sick Leave Control List, which requires six undocumented absences within a running year. Because of these different criteria, an employee may conversely be on the Sick Leave Control list, yet also be amongst the 70% of employees excluded from meeting the sick leave requirements listed above.

Late Report

Employees are obligated to report for their assignments as directed:

- Employees must report and be ready to work at the time their tour of duty begins. If an employee reports late, supervision has the option of allowing the employee to work the remainder of the tour of duty or sending the employee home. In either instance, the employee will be docked appropriately and be subject to disciplinary action.

Absent Without Leave (AWOL)/Job Abandonment/Extended AWOL Procedures

- Absence from duty without proper authority is regarded by Transit as willful neglect of duty and as a serious breach of discipline.

Job Abandonment/Extended AWOL for TWU Local 100:

- Any employee represented by TWU Local 100 or SSSA, who is AWOL for five consecutive calendar days is presumed to have abandoned his/her position and should be charged with abandoning his/her position and extended AWOL with a recommended penalty of dismissal from service. (See Appendix B - TWU Local 100 Job Abandonment Procedures).

Job Abandonment/Extended AWOL for Authority Employees Not Represented by TWU Local 100:

- For employees not represented by TWU Local 100 or SSSA, if an employee has been AWOL for four work days, the responsibility center will send the employee a letter by certified mail, return receipt, advising the employee of his/her status, the consequences of his/her failure to comply and order the employee to report immediately for a disciplinary hearing.
- In all cases, employees deemed to be AWOL should not be suspended.
- Failure to comply with Sick Leave requirements will result in an employee being denied sick leave, docked pay and/or subject to appropriate disciplinary action. A set of sample disciplinary charges for various Time & Leave violations follows below. Please remember that these are guidelines and that contractual provisions may vary between bargaining units.

Chronic/Excessive Absenteeism

- NYC Transit expects its employees to come to work on a regular basis and has the right to discipline employees who are chronically and/or excessively absent from work, regardless of whether the absences are medically documented. Instances of chronic/excessive absenteeism are fact specific and need to be reviewed on a case-by-case basis. While there is no enumerated threshold as to what constitutes chronic/excessive absenteeism, many factors, such as pattern absences, inclusion on the Sick Leave Control List, and RDO-connected absences, are considered.
- ***For employees represented by TWU Local 100 - in the event that NYC Transit determines that an employee's sick leave record indicates abuse for which a chronic absenteeism charge would, in NYC Transit's view, be warranted, before bringing such a charge, NYC Transit must be afford the employee with the opportunity to present evidence that his/her sick leave usage is the result of a verifiable chronic medical condition.***

Documenting Emergency Leaves

Employees may request to use leave on an emergency basis. In the event of an unscheduled emergency, employees must provide the following:

1. Notice to the division at least one hour prior to the employee's scheduled tour,
2. The nature of the emergency must be satisfactorily explained and,
3. The employee's whereabouts (phone number and complete address) must be provided.

Approval for use of emergency leave is granted subject to being substantiated, i.e., documented to the satisfaction of supervision. Employees who fail to satisfactorily document emergency leave or who request emergency leaves in a manner considered excessive or unwarranted by supervision will be subject to discipline and denial of leave pay.

In the event that an employee's request for an emergency day is denied, and the employee has been directed to report to work and fails to do so, he/she shall be deemed to be absent without leave (AWOL).

TIME AND LEAVE VIOLATIONS

SAMPLE CHARGES

Failure to Report for Scheduled Tour of Duty/Absent Without Leave

On March 7, 2008 your scheduled tour of duty was from 8:00 am to 4:00 pm. You failed to notify the Authority of your intention to be absent. You were absent without proper authorization and considered absent without leave.

Unauthorized Lateness

On March 3, 2008 you reported twenty minutes late for your tour of duty in violation of Rule 5. Your tour of duty was scheduled to begin at 10:00 pm and you arrived at 10:20 pm.

Failed to Provide Notice of Intent to be Absent at Least 1 Hour Prior to the Start of Scheduled Tour of Duty

On April 1, 2008 you failed to notify the Authority of your intent to be absent at least one hour prior to the start of your scheduled tour of duty in violation of Section 2.6J of the Collective Bargaining Agreement.

Failed to Submit a Sick Leave Application within 3 Days of Return to Work

You reported sick from your scheduled tour of duty from 10:00 pm to 6:00 am on Sunday March 30, 2008 and returned to duty on Monday March 31, 2008. you thereafter failed to provide a sick leave application within three days in violation of Section 2.6G of the Collective Bargaining Agreement.

Failed to Provide Medical Documentation for Sick Leave of More than 2 days Duration

You claimed to be out sick from April 8-April 11, 2008. You thereafter submitted a sick leave application which did not provide medical documentation for this absence OR provided medical documentation which fails to certify inability to perform your duties during the period of absence in violation of Section 2.6 of the Collective Bargaining Agreement.

Failed to Provide Medical Documentation for Sick Leave While on the Sick Leave Control List

You were placed on the sick leave control list on October 23, 2007. On March 1, 2008 you reported sick. You thereafter submitted a sick leave application which failed to provide medical certification for this period.

Failed to be Available at Reported Sick Leave Location

On March 24, 2008 you reported sick for your scheduled tour of duty. At about 12:50 pm, Special Inspector No. 20 visited the location where you reported you could be found (or address of record) and could not locate or contact you in violation of Section 2.6K of the Collective Bargaining Agreement.

Failed to Notify the Authority of Change in Sick Leave Location

On March 24, 2008 you reported sick for your scheduled tour of duty. At about 12:50 pm you notified the Authority that you were leaving your reported sick leave location for the office of Dr. Moss at 123 Linden Blvd, Queens, NY. You thereafter failed to make a call reporting your return to the sick leave location in violation of Section 2.6J of the Collective Bargaining Agreement.

Extended AWOL

The records of the Department of Rapid Transit Operations indicate that you have been absent without leave since February 1, 2008. Pursuant to Section 2.11(A) of the Collective Bargaining Agreement you are presumed to have abandoned your position and are dismissed effective February 6, 2008.

USE OF DRUGS, CONTROLLED SUBSTANCES AND ALCOHOL

By Federal Regulation (Federal Transit Administration - “FTA”), Policy and contract, MTA New York City Transit is a Drug Free Workplace. Employees who use or possess drugs or controlled substances on or off duty are subject to discipline, including dismissal. Employees who possess alcohol on duty or who test positive for alcohol in an Authority test are likewise subject to discipline, including dismissal.

Under the FTA, safety-sensitive employees are subject to the following types of drug and alcohol testing: reasonable suspicion; post-accident; random; pre-employment, reclassification or transfer. By Transit policy and contract, non-safety-sensitive employees are subject to similar testing. The disciplinary consequence of a drug/alcohol positive depends in some cases on 1) whether the positive is for alcohol, marijuana or other drugs; 2) whether the positive is the first, second or third; 3) whether and when the employee has completed EAP and/or returned to duty prior to a second positive test. The detailed matrix charts following this discussion specify the disciplinary consequences for positive test results under each of these conditions. There should be no variation from the penalty found in the matrix.

When preparing to prefer disciplinary charges against an employee who is in violation of Transit’s Drug and Alcohol policies, it is important to consider the type of testing, the employee’s prior history (if any) of positive findings, the timing of any prior positive findings, and the employee’s status with respect to EAP treatment and return to duty.

Not mentioned in the charts that follow, but nevertheless important, are the disciplinary consequences for EAP non-compliance where the employee has a prior drug or alcohol positive and has been referred for treatment under the relevant P/I or contractual provision. For employees already in a “dismissed status” under the relevant provision, EAP’s determination of non-compliance prior to a return to duty means that the Division need not prefer disciplinary charges for the non-compliance. Instead, the Division’s role is to take any steps necessary to process the termination of the employee by way of a personnel action. For employees who are considered to be on a paid or unpaid leave of absence during EAP treatment or who have returned to work, EAP’s determination of non-compliance requires that the Division prefer disciplinary charges for dismissal from service.

Please also note that employees with less than one year of service or who are probationary are dismissed without restoration following a first positive for drugs or alcohol. For Operating Authority (OA) employees, please note that the probationary period is six (6) months, unless it is extended under the collective bargaining agreement.

Non-safety sensitive employees are only subject to post-incident drug and alcohol testing.

See Appendix C - President’s Letter dated July 16, 2007 concerning Alcohol-Free and Drug-Free Workplace.

Note: Drug and Alcohol Matrices follow

DRUG & CONTROLLED SUBSTANCES MATRIX

	Marijuana (non-probationary employees)	All Drugs & Controlled Substances (non-probationary employees)
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First Time Positive (except non represented employees including managers and Staten Island Railway (SIR) employees)

Tested for all reasons except random or incident testing with injury.	Leave of absence until approved by EAP/UAP ¹ to return to duty and pass a Transit Administered drug test. The employee is permitted to use accrued leave balances.	Dismissal with restoration upon approval of EAP and pass a New York City Transit administered drug test.
Random Testing	Leave of absence until approved by EAP/UAP to return to duty and pass a New York City Transit administered drug test. The employee is permitted to use accrued leave balances.	Leave of absence until approved by EAP to return to duty and pass a New York City Transit administered drug test. The employee is permitted to use accrued leave balances.
Non-represented employees including managers	Dismissal with opportunity for restoration upon approval of EAP and pass a New York City Transit administered drug test.	Dismissal with opportunity for restoration upon approval of EAP and pass a New York City Transit administered drug test.

Second Time Positive (except non-represented employees including managers and Staten Island Railway (SIR) employees)

All testing reasons, including random

One year or less after restoration to duty following first positive test	Dismissal without restoration	Dismissal without restoration
More than one year after restoration to duty following first positive test (except incident with injury)	Dismissal from service with restoration to an available, budgeted, non-safety sensitive position upon completion of EAP and pass a New York City Transit administered drug test.	Dismissal from service with restoration to an available, budgeted, non-safety sensitive position upon completion of EAP and pass a New York City Transit administered drug test.
Non-Represented employees, managers and SIR employees	Dismissal without opportunity for restoration	Dismissal without opportunity for restoration

Third Time Positive (All employees)

All testing reasons including random	Dismissal without restoration	Dismissal without restoration
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Refusal to Take a Drug Test (all employees except non-represented employees and managers)

Testing for all Reasons (except Random)	Dismissal without restoration	Dismissal without restoration
Random Testing	Employee treated as positive and in addition is subject to appropriate discipline for failure to comply with a direct order (i.e. insubordination) for which the penalty may be dismissal.	Employee treated as positive and in addition is subject to appropriate discipline for failure to comply with a direct order (i.e. insubordination) for which the penalty may be dismissal.
Non-represented employees including managers	Dismissal without restoration	Dismissal without restoration.

Positive Testing Following Incident Resulting in Harm or Injury to Any Person (All employees)

Incident Testing	Dismissal without restoration	Dismissal without restoration
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¹ EAP refers to a Substance Abuse Professional from MTA-NYC Transit's Employee Assistance Program. UAP refers to a Substance Abuse Professional utilized by a Union Assistance Program. All hourly employees who test positive for marijuana as their first positive test are referred to their respective Union Assistance Program.

ALCOHOL MATRIX

Consequences of testing positive at various levels or refusal for all employees, including FTA covered employees, with more than one (1) year of service*

First Time Positive (except non-represented employees and Staten Island Railway (SIR) employees)¹

	Penalty
All Testing Reasons except Random or incident testing with injury	Disciplinary suspension of at least (30) days and return to work upon approval of EAP and pass a New York City Transit administered alcohol test.
Random testing	Leave of absence until approved by EAP to return to duty and pass a New York City Transit administered alcohol test. No disciplinary action is taken.
Non-represented employees and managers - all Testing Reasons except incident testing involving injury	Dismissed with opportunity for restoration upon approval of EAP and pass a New York City Transit administered alcohol test.
Staten Island Railway Employees – tested for all reasons except incident testing with injury	Disciplinary suspension of at least (30) days and return to work upon approval of EAP and pass a New York City Transit administered alcohol test.

**** If found in possession of alcohol, an employee is subject to dismissal if found positive via testing held either prior to or subsequent to being found.**

Second Time Positive (except non-represented employees and Staten Island Railway (SIR) employees)

	Penalty
All Testing Reasons including Random Testing - <i>One year or less</i> after restoration to duty following first positive test.	Dismissal without opportunity for restoration
All Testing Reasons including Random Testing - <i>More than one year</i> after restoration to duty following first positive test.	Dismissal from service with restoration to available, budgeted, non-safety sensitive position upon completion of EAP and passing a New York City Transit administered alcohol test.
Non-represented employees managers and SIR employees	Dismissal without opportunity for restoration

Third Time Positive (All employees)

	Penalty
All Testing Reasons including Random Testing	Dismissal without opportunity for restoration

* Employees with less than one (1) year of service will be terminated upon the first positive test result without opportunity for restoration. Probationary NYC Transit employees with permanent underlying Civil Service titles will be returned to that title and then be subject to the consequences set forth herein.

¹ For the purpose of this matrix, a “positive” for alcohol is .05 or greater, confirmed by a blood alcohol test pursuant to policy and/or collective bargaining agreement. For SSSA represented employees, a “positive” for alcohol is .04 or greater by a breath analysis test.

Refusal to Take Alcohol Test (All employees)

	Penalty
All Testing Reasons including Random Testing	Employee considered a positive and in addition is subject to appropriate discipline which may include dismissal.

Positive Testing Following Incident Resulting in Harm or Injury to Any Person (All employees)

	Penalty
All Testing Reasons including Random Testing	Dismissal without opportunity for restoration

ALCOHOL

Consequences of testing positive for all FTA covered employees

(These consequences are in addition to the specific disciplinary consequences indicated on pgs. 14-15.)

FTA Covered Employees

Alcohol level by Breath analysis	Penalty
.02 to less than .04	Not permitted to perform safety sensitive duties for the next 8 hours.
.04 to less than .05	Immediately removed from safety sensitive duties and referred to EAP. Leave of absence until approved by EAP to return to duty. The employee may utilize leave balances. (Exception: for SSSA represented employees who test .04 or greater on a breath analysis test, the attached matrix applies)
.05 or Greater	Immediately removed from safety-sensitive duties and referred to EAP. If eligible to return to safety sensitive duties under policy and/or collective bargaining agreement, the employee is not returned until approved by EAP. Apply attached matrix if the .05 or greater is confirmed by a blood alcohol test.

Testing is conducted via breath analysis. If an employee's reading is .02 or greater, a blood alcohol test is then administered.

THEFT AND FRAUD

Offenses which involve theft and other such acts of moral turpitude are so egregious as to require management to seek dismissal in the first instance. Accordingly, these types of offenses do not lend themselves to normal progressive discipline standards.

Theft by a Transit employee is generally defined as the taking of property and/or services without permission/authority to do so. Such offenses include the use of Transit's "EZ-Passes" for personal use, allowing civilians to use the employee's EPIC pass, falsification or alteration of time and attendance documents or doctor's certification for paid sick leave.

Fraud by a Transit employee is generally defined as an act of deceit or misrepresentation intended to obtain a benefit for which he/she would not otherwise be entitled. The most common example of fraud is submission of an altered sick leave application or doctor's certification, even if the employee is not seeking paid leave.

It cannot be overstated that acts involving theft and fraud will not be tolerated by the employer and dismissal should be sought.

Examples of theft and fraud charges are below:

On April 8, 2008, you filed an application for sick leave dated April 3, 2008 for the period of April 2, 2008 to April 5, 2008 which contains fraudulent alterations. This fraudulent filing constitutes theft and a misrepresentation of your correct leave status.

On January 10, 16, and 17, 2008, you were observed by members of supervision accepting currency from customers for fares. You then allowed them entry into the system via the agent-operated turnstile. Your actions constitute theft.

March 12, 2008 you were observed by a Transit Security Officer removing electronic and computer equipment from 2 Broadway without authorization. Your actions constitute theft of Transit property.

On March 31, 2008, you submitted a time card for the bi-weekly pay period of March 16, 2008 through March 29, 2008 which indicates that you were working when, in fact, you were not working. This fraudulent submission constitutes theft.

HARASSMENT, INTIMIDATION, PHYSICAL VIOLENCE, THREATS

MTA NYC Transit policy prohibits harassment, intimidation, physical violence or threats against employees, including supervisors and managers, and/or customers. Departments must take strong and immediate action to protect employees from such unacceptable acts by suspending and seeking the dismissal of these employees.

In the case of an assault committed by a New York City Transit employee:

- (1) The department must immediately notify the Office of Labor Relations.
- (2) A Labor Relations liaison will be assigned to the case, and will follow it through all steps of the appeal process.

In drafting charges, cite the specific misconduct rather than making a general allegation. For example, "On April 1, 2008, you punched your supervisor John Doe in the nose."

An employee suspended due to an alleged assault must not be allowed on Transit property without specific permission from management, e.g., to attend a disciplinary hearing.

Transit will do everything in its power to protect its employees against unwarranted attacks, and to ensure that the full measure of the disciplinary process is applied to employees who engage in harassment, intimidation, physical violence or threats.

See Appendix D – Workplace Violence Prevention Program for the New York City Transit Authority and Manhattan and Bronx Surface Transit Operating Authority, dated March 7, 2007.

DISCRIMINATION/EEO

It is MTA New York City Transit Policy that all employees have equal access to employment opportunities and to administer all personnel policies, practices and benefits of employment on a non-discriminatory basis. Supervisors and Managers must make all employment decisions (recruitment, hiring and placement) without regard to such factors as:

- race
- color
- sex
- sexual orientation
- religion
- national origin
- age
- disability
- marital or veterans status
- arrest/conviction record

Additionally, the above-cited criteria must not be considered when making decisions concerning terms and conditions of employment such as:

- work assignments
- evaluations
- promotions, demotions or transfers
- disciplinary actions
- layoffs, recalls or terminations
- training and education programs
- compensation or benefits

Finally, *all employees* are *strictly prohibited* from making any derogatory remarks in the workplace concerning the above-cited criteria.

All employees have the right to file an EEO complaint or assist in an EEO investigation free from coercion, intimidation, retaliation or other retaliatory interference.

Employees who engage in any prohibited behavior as described above are subject to disciplinary action, up to and including dismissal. Managers or supervisors who knowingly allow their subordinates to engage in such behavior are also subject to appropriate disciplinary action.

In drafting charges, cite the specific misconduct rather than making a general allegation. For example, “On May 1, 1997, you told your subordinate John Doe he would not receive a promotion to the position of office manager because he was ‘too old for the job,’” rather than “On May 1, 1997, you discriminated against your subordinate John Doe.”

See Appendix E – President’s Letter dated December 2007 concerning Respectful Workplace Policy.
See Appendix F – President’s Letter dated February 2008 concerning Equal Employment Opportunity Policy

SEXUAL HARASSMENT

It is MTA New York City Transit Policy that all employees have a right to work in an environment free from sexual harassment of its employees in any form. Sexual harassment is a form of gender-based discrimination under Federal, State and Local law.

Supervisors are strictly prohibited from threatening or insinuating, either explicitly or implicitly, that an employee's submission to or rejection of sexual advances will in any way influence any personnel decision regarding that employee's employment, wages, advancement, assigned duties, shifts or any other condition of employment or career development.

Additionally, all employees are prohibited from engaging in sexually harassing conduct (physical or verbal) in the workplace which has the purpose or the effect of unreasonably interfering with an individual's work performance, or creating an intimidating, hostile or offensive work environment. This includes, but is not limited to:

- offensive or unwelcome sexual flirtations, advances or propositions
- continual or repeated verbal abuse of a sexual nature
- graphic verbal commentaries about an individual's body
- sexually degrading words used to describe an individual
- the display in the workplace of sexually suggestive objects or pictures

Managers/supervisors should consider the above-mentioned criteria as well as the totality of the circumstances (e.g., the nature of the alleged misconduct and the context in which it occurred) in determining whether the alleged conduct constitutes sexual harassment.

Employees whose behavior is determined to constitute sexual harassment are subject to disciplinary action, up to and including dismissal. Managers or supervisors who knowingly allow such behavior to persist within their offices or work areas are also subject to appropriate disciplinary action.

In drafting disciplinary charges, cite the specific misconduct rather than making a general allegation. For example, "On April 1, 2008, you told your subordinate Jane Doe that she would not receive a promotion unless she submitted to your sexual advances" rather than "On April 1, 2008, you sexually harassed Jane Doe."

See Appendix G – President's Letter dated March 2008 concerning Sexual and Other Discriminatory Harassment (Revised).

INAPPROPRIATE LANGUAGE

It is MTA New York City Transit policy that all employees have a right to work in an environment in which employees treat one another with respect and refrain from using language which others might find demeaning or offensive. In this regard, coarse, vulgar language that may include cursing, profanity, or words, which demean someone, is prohibited and employees who use such language are subject to appropriate discipline.

In determining whether to bring disciplinary charges against an employee who engages in this type of behavior, examples of factors to consider include, but are not limited to:

- the actual word or words used
- to whom the words were said (e.g., a superior, a co-worker who is a friend)
- the tone of voice used
- the context in which the words were used
- whether other people witnessed the conversation
- where the conversation took place

In investigating disciplinary charges, detailed, specific statements (G-2s) from all witnesses are essential. G-2s should state exact quotes where possible and should also cover the factors referred to above. In particular, corroborating statements from unbiased witnesses are highly desirable.

In drafting charges, cite the specific misconduct rather than making a general allegation. For example, “On April 1, 2008, in the presence of D/S John Doe, you told your supervisor John Jones in a loud tone of voice, ‘f*ck-you, do it yourself’ after he asked you to sweep the locker room floor,” rather than “On April 1, 2008, you cursed at your supervisor.”

Also important to consider both in drafting charges and in managing the workplace, is the common defense of employees charged with using inappropriate or profane language. Commonly referred to as the “shop talk” defense, employees will seek to show that the use of profanity is an accepted practice at a particular work location and that other employees who engage in such conduct are not disciplined. In order to avoid this defense, it is important to clearly articulate to all employees that no profanity, under any circumstances, is acceptable. Once on notice, employees who engage in the conduct should be disciplined in the same manner.

HEALTH AND SAFETY VIOLATIONS

Whenever an employee's action or inaction in the course of performing his/her duties causes or potentially causes injury to a person or damage to property, the behavior must be treated as a health and safety violation. These violations are priority matters, which must be thoroughly investigated. The investigation must include a determination of whether pre-disciplinary suspension is required.

A few examples of health and safety violations and the job titles typically associated with such incidents are: Collisions (Train Operators, Bus Operators); Customer drags (Conductors, Bus Operators); and inattentiveness to duties that actually or potentially caused injury or death (Train Operator, Conductor, Tower Operator, Bus Operator, etc.).

The seriousness of a health and safety violation may be compounded by an employee's failure to report the incident and/or efforts to mislead investigators. In the event one or more employees attempt to "cover up" an employee's health and safety violation, charges are usually required. An effort to "cover up" a health and safety violation may require more serious attention than the original violation.

All health and safety violations must be treated as priorities, *i.e.*, investigated immediately and charges served promptly with suspension, if warranted by provable facts. These cases typically arise from improper operation of vehicles or equipment directly related to the movement of customers. All managers and supervisors must be aware of the potential for health and safety violations.

Health and safety violations may require demotion or dismissal in the first instance, even when a long-term employee is involved. The severity of the penalty is determined by a number of factors in addition to past disciplinary history such as: (1) the seriousness of the employee's action or inaction; (2) the severity of injuries; (3) the extent of property damage; and (4) the employee's ability or obligation to prevent the incident. Among the most serious health and safety violations are those that cause or contribute to the death of a person.

As part of the investigation, all employees with knowledge or information related to a health and safety violation should be directed to write a statement or report appropriate to their title and involvement with the incident or its aftermath. A thorough investigation should yield all statements, technical material, department incident reports and investigative reports. It may be necessary for a department to obtain reports or records from other departments. It is crucial that all departments identify witnesses by name, pass number and department during the investigation stage. Employees may have a limited right to union presence during an investigation or inquiry into the cause of a health or safety case. For this reason, it is always important to be aware of rights arising from union representation. Consult the appropriate collective bargaining agreement or your Labor Relations Director for further guidance on these matters.

CUSTOMER COMPLAINTS

MTA New York City Transit considers customer complaints against employees to be of the highest priority. All employees are to treat our customers with courtesy, patience and respect. Transit has zero-tolerance for employees who treat our customers in any other manner.

Accordingly, customer complaints are to be handled expeditiously. Responses to a customer's inquiries after the complaint is made are likewise to be promptly made.

An employee represented by TWU Local 100 who is disciplined solely based on a customer complaint, and where the recommended penalty is dismissal, will not be pre-disciplinary suspended for the charge until such time as the Union or employee fails to proceed at any step in the grievance procedure. The employee may be assigned to alternate duties. The only instance where this would not apply is when the complaint involves a physical altercation, assault or threats of violence.

When drafting charges, be as specific as possible about the misconduct: *e.g.*, "On or about March 1, 2008, the employee displayed conduct unbecoming by loudly, rudely and offensively stating to a customer that "if you don't like the damned service you're getting, take a cab, because I don't care if you stand here all day..."

CRIMINAL ARRESTS & CONVICTIONS

(on and off duty)

As a general rule, employees may only be charged with a criminal conviction, not an arrest. In all disciplinary actions involving criminal conduct or criminal convictions, the employee should be charged with the underlying misconduct.

Examples of proper charges:

On April 15, 2008, you engaged in conduct unbecoming a Transit employee in that you operated a motor vehicle while intoxicated and/or under the influence of drugs.

On April 15, 2008, you were convicted in a court of law of possessing crack cocaine, a controlled substance.

Please note that, while employees are not ordinarily subject to discipline based solely upon an arrest, he/she may be subject to discipline for failure to notify or timely notify Transit of such arrest under Transit rules. When charging an employee with failure to timely notify Transit of an arrest, the charges may be phrased as follows:

“On or about April 1, 2008, you were arrested for Driving While Intoxicated in New York State and failed to timely notify Transit of the arrest until April 20, 2008, in violation of Transit’s Rules and Regulations.”

OFF DUTY CONDUCT*

Management's right to discipline an employee for off-duty conduct depends on the effect of that conduct on company operations. Factors to be considered are:

- behavior which harms Transit's reputation
- behavior which renders the employee unable to perform his/her duties or appear at work, in which case the discharge would be based upon inefficiency or a time and leave violation
- behavior which leads to a refusal, reluctance or inability of other employees to work with him/her

Note, however, that these factors must be real and provable, not speculative. The connection between the off-duty incident and the extent to which the business is affected must be reasonable and discernible.

Sample charges:

"On March 15, 2008, you engaged in conduct unbecoming a NYC Transit employee in that you slashed [your neighbor] with a knife."

"On March 15, 2008, you engaged in conduct unbecoming a NYC Transit employee in that you operated a motor vehicle while intoxicated and/or under the influence of drugs."

DISCIPLINARY CASES - TWU, LOCAL 100 AND NYC TRANSIT (TA)

INTRODUCTION

The TWU Local 100, MTA New York City Transit (TA) collective bargaining agreement gives TWU Local-100 (TA) represented employees the right to appeal or grieve disciplinary action recommended by management. It is understood that the right to discharge or discipline employees for cause and to maintain discipline and efficiency of employees is the responsibility of the Authority. The Authority shall be guided by a policy of progressive discipline in the administration of its disciplinary procedures. Disciplinary action may consist of:

- Warning
- Reprimand
- Suspension
- Demotion
- Dismissal

The disciplinary process and appeal levels are as follows:

- Notification
- Step I hearing
- Step II (the Car Equipment Department also has a Step III hearing)
- Arbitration

All hearings must be scheduled at a time when the employee is not working (e.g., RDO, outside tour of duty). In so far as practicable, hearings shall be scheduled during work hours. The employee shall be released, without loss of pay, to attend the hearing. If the charges are not sustained at any Step after a Step I hearing, the employee shall be paid three (3) hours straight time for each hearing session he attended beginning with Step II. However, if the charges are sustained in whole or in part the TA shall recover the loss in pay associated with the release. Where an employee fails to appeal a disciplinary action within the prescribed time limits at any step of the grievance procedure, the department should take appropriate action to implement the recommended penalty.

Although discipline may not be imposed until the completion of the disciplinary process described above, an employee may be pre-disciplinary suspended for serious misconduct including, but not limited to:

- Use of controlled substances
- Being under the influence of an intoxicating liquor on the job
- Theft of MTA-New York City Transit Property
- Chronic absenteeism
- Assault on a supervisor
- Gross insubordination
- Fraudulent doctor's lines (only if within one-year of submission)

If an employee is pre-disciplinary suspended, the department must notify the TWU Grievance Coordinator immediately (fax is acceptable) using the form in Appendix H (see attached.) The disciplinary grievance steps are more fully described on the following pages.

PRE-DISCIPLINARY SUSPENSION

- Shall be issued for reasons of serious misconduct detrimental to the operation of the Authority including but not limited to use of controlled substances, being under the influence of alcohol or illegal drugs on the job, theft of Authority property, assault on a supervisor, gross insubordination, or time and attendance violations which involve fraud.
- The Authority shall make its best efforts to notify the Union headquarters on the day that an employee is pre-disciplinary suspended.
- An employee who has been suspended pending appeal shall be restored to the payroll pending the finalization of the disciplinary case after the employee has been suspended for thirty (30) days.
- The thirty (30) days shall be counted from the day on which the Authority receives the employee's notice of appeal to Step I and counting shall continue until the day that the case is first scheduled for Arbitration.

The Union's Right to Appeal the Pre-Disciplinary Suspension

- The Union may contend that a pre-disciplinary suspension has been improperly imposed. If the Union opts to do so, the question of the propriety of the pre-disciplinary suspension is subject to immediate review by an impartial Arbitrator. This arbitration shall be heard by a disciplinary arbitrator within two business days of the Union's request or as soon as practicable.
- The arbitrator shall determine:
 - Whether the offense charged is of the kind for which a pre-disciplinary suspension should be imposed; and
 - Whether there is reasonable basis to believe that the Grievant may be guilty of that offense. The arbitrator issues this decision from the bench immediately.
 - This decision of the arbitrator shall be limited to the matter of the imposition of the pre-disciplinary suspension and may not be introduced by either party in a subsequent arbitration on the merits of the charge.

The Disciplinary Grievance Process

NOTIFICATION

- The department must prefer disciplinary charges within 30 working days (excluding time such as vacation, sick, IOD, jury duty) of the date when the Responsibility Center head is aware of the alleged misconduct (exceptions: 1) an on-going investigation takes longer than 30 working days; 2) the alleged misconduct would constitute a crime)
- The charges should reference the rules violated and should contain a brief statement of facts that tells the employee what he/she did that was wrong or how he/she violated the rules
- Must be accepted or appealed--in writing--within 5 working days. An employee's refusal to acknowledge notification in writing shall be cause for further disciplinary action.
- Warnings shall be implemented at any step of the grievance procedure when the employee is notified and fails to appear for a scheduled hearing provided that the hearing was not scheduled for a day when the employee is on authorized substantiated leave.
- If an employee fails to appear on two occasions at any step hearing in the disciplinary grievance procedure, the grievance shall be deemed abandoned and the penalty vacated.

STEP I

- Scheduled by the department within 15 working days after appeal of notification
- Heard by the Department head or designee
- Employee must either represent himself or be represented by the Union (no outside counsel permitted)
- Decision must be rendered--in writing--within 10 days of the hearing
- For pre-disciplinary suspended employees, the Department Head or designee meets with the employee within 24 hours of the suspension (or the next weekday work day exclusive of the employee's RDO if the employee was suspended on a weekend or a holiday) and renders a decision within 2 working days following the meeting
- Must be accepted or appealed--in writing--within 5 working days from time of notification

STEP II

- Scheduled by the Office of Labor Disputes Resolution
- Must be heard within 30 working days after appeal of Step I decision is received
- Heard by the Deputy Vice President, Labor Disputes Resolution or designee
- Employee must either represent himself or be represented by the Union (no outside counsel permitted)
- Decision must be rendered--in writing--within 20 working days of the hearing
- For pre-disciplinary suspended employees, must be heard within 8 working days after appeal of Step I decision is received; decision must be rendered--in writing--within 2 working days following the hearing
- Must be accepted or appealed--in writing--within 5 working days from time of notification

ARBITRATION

- Scheduled by the Office of Labor Disputes Resolution
- Employee may be represented by himself, the Union, or outside counsel
- Witnesses appear and testify under oath
- Arbitration shall meet as soon as practicable at a time and place agreed upon by the parties, or if they cannot agree, the impartial chairperson shall choose a date upon at least fourteen (14) days notice to the parties.
- The Union or management shall be able to take a case off the calendar one time for cause within forty-eight (48) hours notice to the other party prior to the hearing date.
- Decision must be rendered--in writing--within 15 working days of the hearing (if employee is suspended the Arbitrator will make every effort to have it in five (5) days)
- Must be accepted or appealed – in writing – within five (5) working days of notification of the decision
- If an employee fails to appear at an Arbitration hearing on two (2) occasions, the employee will be given fifteen (15) calendar days from the date of the second hearing to submit written proof demonstrating that he/she could not appear for good cause.
- A pre-disciplinary suspension shall be subject to immediate review by a disciplinary arbitrator. The arbitrator shall decide whether the pre-disciplinary suspension should have been imposed for the offense charged and whether there is a reasonable basis to believe that the grievant may be guilty of the offense.

POST-ARBITRATION PROCEDURES

- If the charges are not sustained at any step after a Step I hearing, the employee receives pay for 3 hours straight time for each hearing session attended beginning with Step II
- If the penalty to be imposed is a suspension (and the employee was not pre-disciplinary suspended), by mutual consent the employee may work during the suspension period and pay a fine equal to 30% of his/her regular salary during the period in question
- The Authority shall not deduct more than thirty percent (30%) of an employee's weekly salary in any given week.
- If the employee elects to pay a fine, only the suspension accepted or imposed through arbitration appears on the employee's disciplinary transcript

DISCIPLINARY CASES – TWU LOCAL 106–TRANSIT SUPERVISORS ORGANIZATION
(TSO)

STATION SUPERVISORS II

INTRODUCTION

The TSO Local 106/MTA New York City Transit (TA) collective bargaining agreement gives TSO Local 106 represented employees the right to appeal or grieve disciplinary action recommended by management. Disciplinary action may consist of:

- Warning
- Reprimand
- Suspension
- Dismissal

The disciplinary process and appeal levels are as follows:

- Notification
- Step I hearing
- Step II hearing
- Arbitration

Where employees fail to appeal a disciplinary action within the prescribed time limits at any step of the grievance procedure, the appeal shall be deemed abandoned and the department should take appropriate action to implement the recommended penalty.

Although discipline may not be imposed until the completion of the disciplinary process described above, an employee may be pre-disciplinary suspended for serious misconduct including, but not limited to:

- Use of controlled substances
- Being under the influence of alcohol on the job
- Fraud
- Theft of Authority property
- Assault upon another employee
- Gross insubordination
- a serious violation of the Authorities' EEO or sexual harassment policies

If a pre-disciplinary suspended employee remains suspended for more than 30 suspension days, the employee shall be restored to the payroll. "Suspension Days" run from the day the authority receives written appeal to the Step I hearing and runs until the day the matter is first scheduled before the Impartial Arbitrator. "Suspension Days" do NOT include any time between the issuance of a decision from one step to the receipt of the appeal to the next step in the procedure nor any delay of a hearing brought about by the employee or his/her union representative. "Suspension Days" do NOT include RDOs or observed holidays.

The disciplinary grievance Steps are more fully described on the following pages.

NOTIFICATION

- No disciplinary proceeding shall be commenced more than thirty (30) working days after the employee's Responsibility Center Manager or Immediate Supervisor has knowledge of the alleged incompetency or misconduct complained of.
- The charges should reference the rules and/or policies violated and should contain a brief statement of facts describing the misconduct
- The Authority shall make its best efforts to notify the Union on the day that an employee is pre-disciplinary suspended.
- The union shall be supplied with a copy of the employee's disciplinary record as soon as is feasible
- Must be accepted or appealed by the employee or his/her union representative --in writing-- within 5 working days to the Department Head or designee.

STEP I

- Scheduled by Department Head or designee within 15 working days after appeal of notification
- Heard by the Department head or designee
- Employee can either represent himself or be represented by the Union (no outside counsel permitted)
- Decision to be rendered--in writing--within 10 working days of the hearing
- Must be accepted or appealed--in writing--within 5 working days to the Senior Director, Administrative Trials and Hearings or designee.

STEP II

- Scheduled by the Office of Labor Relations within 30 working days after appeal of Step I decision is received
- Heard by the Senior Director, Administrative Trials and Hearings or designee
- Employee can either represent himself or be represented by the Union (no outside counsel permitted)
- Decision to be rendered --in writing-- within 20 working days of the hearing
- Must be accepted or appealed --in writing-- within 5 working days to the Impartial Arbitrator

ARBITRATION

- To be scheduled by mutual agreement of the parties as soon as practicable before the Impartial Arbitrator
- If a date and time cannot be agreed upon, the Impartial Arbitrator shall select a date and time and notify the parties with at least 14 working days notice
- Employee may be represented by himself, the Union, or outside counsel
- Witnesses appear and testify under oath
- Decision to be rendered --in writing- within 20 working days of the hearing

POST-ARBITRATION PROCEDURES

- If the penalty to be imposed is a suspension (and the employee was not pre-disciplinary suspended), by mutual consent the employee may work during the suspension period and pay a fine equal to 30% of his/her regular salary during the period in question
- If the penalty to be imposed is a suspension (and the employee was not pre-disciplinary suspended), at management's discretion, the employee may work on his/her RDO or during his/her vacation period at a rate of one day for each day of suspension
- If the employee elects to pay a fine, only the suspension accepted or imposed through arbitration appears on the employee's disciplinary transcript.

DISCIPLINARY CASES - TRANSIT SUPERVISORS ORGANIZATION (TSO)
CAREER & SALARY
MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY

INTRODUCTION

The TSO (Career & Salary)/Manhattan and Bronx Surface Operating Authority (MABSTOA) collective bargaining agreement gives TSO (Career & Salary) represented employees the right to appeal or grieve disciplinary action recommended by management. Disciplinary action may consist of:

- Warning
- Reprimand
- Suspension
- Demotion
- Dismissal

The disciplinary process and appeal levels are as follows:

- Notification
- Step I hearing
- Step II hearing
- Arbitration

All meetings, hearings and arbitration must be scheduled at a time when the employee is not working (e.g., RDO, outside tour of duty). Where employees fail to appeal a disciplinary action within the prescribed time limits at any step of the grievance procedure, the appeal shall be deemed abandoned and the department should take appropriate action to implement the recommended penalty.

An employee may be pre-disciplinary suspended for serious misconduct including, but not limited to:

- Insobriety
- Theft
- Insubordination
- Fraudulent doctor's liens

The disciplinary grievance Steps are more fully described on the following pages.

NOTIFICATION

- The department must prefer disciplinary charges as soon as possible after the date when the authority becomes aware of the alleged misconduct
- A copy of the charges served on the employee must be forwarded immediately by certified mail to the TSO
- The charges should reference the rules and/or policies violated and should contain a brief statement of facts describing the misconduct

- The union shall be supplied with a copy of the employee's disciplinary record as soon as is feasible
- Must be accepted or appealed by the employee or his/her union representative --in writing-- within 5 working days to the Department Head or designee.

STEP I

- Scheduled by Department Head
-
- Heard by the Department Head or designee
- Employee can either represent himself or be represented by the Union (no outside counsel)
- Decision to be rendered--in writing--within 7 working days of the hearing
- Must be accepted or appealed--in writing--within 3 working days to the Senior Director, Administrative Trials and Hearings or designee
- In the cases of pre-disciplinary suspension or dismissal (except in cases of theft, insobriety, insubordination or other serious dereliction of duty), the union may appeal directly to arbitration by serving the Senior Director, Administrative Trials and Hearings or designee with written notice stating specific contractual provisions allegedly violated. This notice must be received at least 7 working days prior to the arbitration.

STEP II

- Scheduled by the Office of Labor Relations within 7 working days after appeal of Step I decision is received
- Heard by the Senior Director, Administrative Trials and Hearings or designee
- Employee can either represent himself or be represented by the Union (no outside counsel permitted)
- Decision to be rendered --in writing-- within 7 working days of the hearing
- Must be accepted or appealed --in writing-- within 6 working days to the Impartial Arbitrator with a copy of the request for arbitration sent to Senior Director, Administrative Trials and Hearings

ARBITRATION

- To be scheduled by mutual agreement of the parties as soon as practicable before the Impartial Arbitrator
- If a date and time cannot be agreed upon, the Impartial Arbitrator shall select a date and time and notify the parties with at least 48 hours notice
- Employee may be represented by himself, the Union, or outside counsel
- Witnesses appear and testify under oath
- Arbitrators award is final and binding on the parties
- The party requesting postponement of a scheduled arbitration hearing shall pay the cancellation fee, if any.

POST-ARBITRATION PROCEDURES

- If the penalty to be imposed is a suspension (and the employee was not pre-disciplinary suspended), by mutual consent the employee may work during the suspension period and pay a fine equal to 30% of his/her regular salary during the period in question

- The Authority shall not deduct more than thirty percent (30%) of an employee's weekly salary in any week
- If the employee elects to pay a fine, only the suspension accepted or imposed through arbitration appears on the employee's disciplinary transcript

DISCIPLINARY CASES: SUBWAY-SURFACE SUPERVISORS ASSOCIATION ("SSSA")

INTRODUCTION

The SSSA/MTA New York City Transit collective bargaining agreement gives SSSA represented employees the right to appeal or grieve disciplinary action recommended by management. Disciplinary action may consist of:

- Warning
- Reprimand
- Suspension
- Demotion
- Dismissal

The disciplinary process and appeal levels are as follows:

- Notification
- Step I Hearing
- Step II Hearing
- Arbitration – In cases where the recommended penalty is demotion or dismissal, the appeal will be heard by a Tripartite Panel consisting of an arbitrator, a member selected by management and a member selected by the Union. The decision of the panel must be made by the majority and will be written by the arbitrator no later than 20 days after the closing of the record of the hearing.

Although discipline may not be imposed until the completion of the disciplinary process described above, an employee may be pre-disciplinary suspended for serious misconduct, including, but not limited to:

- Fraudulent doctor's lines
- Use of controlled substances
- Being under the influence of an intoxicating liquor on the job
- Theft of Authority property
- Assault on a supervisor
- Gross insubordination
- Allowing subordinates to commit fraud
- Chronic absenteeism
- Serious safety violations
- Criminal conduct
- Violations of the Authority's policies concerning EEO and Sexual harassment

It should be noted that SSSA represented employees shall not be pre-disciplinary suspended for time and leave violations except when the charge involves fraud.

Upon mutual agreement of the parties an employee may choose to work for any period of suspension and pay a fine equal to 30% of his/her regular salary during the period in question.

The disciplinary procedure is more fully described on the following pages. Note that these procedures shall not apply to probationary or provisional employees.

NOTIFICATION

- No disciplinary proceeding shall be commenced more than thirty (30) working days after the employee's Responsibility Center Manager or Immediate Supervisor has knowledge of the alleged incompetency or misconduct, except where the incompetency or misconduct complained of is the subject of an investigation, or would constitute a crime. Employee absences and Authority observed holidays should be excluded from the 30 working days.
- The charges should reference the rules violated and should contain a brief statement of facts that tells the employee what he did that was wrong or how he violated the rules.
- The charges must be accepted, or a hearing must be requested within five (5) days, in writing.
- If an employee fails to appear on two occasions at any step in the disciplinary grievance procedure, the grievance shall be deemed abandoned and the penalty imposed.

STEP I

- Scheduled to be heard by the department within fifteen (15) days after receipt of the written request
- Heard by the employee's Department Head or designee
- The employee may only be represented by his/her union representative.
- The decision must be rendered to the employee and his/her union representative within ten (10) days
- Must be accepted or appealed within five (5) days, in writing
- For pre-disciplinary suspensions the employee will be given the opportunity to meet with the Division Head within 48 hours of his/her suspension. The decision shall be rendered in writing within 48 hours of said meeting/

STEP II

- Heard before designee from Office of Labor Relations within thirty days of receipt of written appeal.
- The employee may only be represented by his/her union representative.
- The decision must be rendered within twenty (20) days after the closing of the hearing
- Where a pre-disciplinary suspension has been imposed, the hearing shall be held within eight (8) days of receipt of the appeal. The designee shall render his/her decision in writing within 48 hours after the hearing is closed.
- Must be accepted or appealed within five (5) days, in writing

ARBITRATION

- Within 30 days after the closing of the hearing, the arbitrator shall issue a binding and final decision.
- In cases where the penalty is dismissal or demotion the appeal will be heard by a Tripartite Panel. The decision will be issued as soon as possible, but in any event no later than twenty (20) days.

CIVIL SERVICE LAW SECTION 75 DISCIPLINARY HEARINGS

Section 75 of the Civil Service Law governs all disciplinary actions against permanently appointed employees and non-competitive class employees with five years of continuous service in non-competitive titles. Provisional employees with a permanent underlying competitive civil service title are entitled to these procedures whenever dismissal is sought. These procedures do not apply to any employee who is covered by a collective bargaining agreement that includes an alternative disciplinary process. While the vast majority of § 75 cases are processed at the Office of Administrative Trials and Hearings (OATH), Transit uses Formal Trial Board hearings for processing some cases.

Important: When a Section 75 employee appears to be a potential subject of disciplinary action, in advance of questioning on the subject of the potential discipline, the employee must be notified in writing that at the time of questioning they have a right to union representation. If representation is requested, a reasonable period of time must be afforded to obtain the representation. **Failure to comply with this requirement could result in the exclusion of statements made during questioning. Any other evidence or information obtained as a result of the questioning may also be excluded.**

1. The Department prepares a recommendation to prefer charges pursuant to §75 of the Civil Service Law. This must include:
 - a. Employee's full name, address of record, department, title, pass number and transcript of record.
 - b. A synopsis of the allegations. Include time, date, place of occurrence, witnesses, statement of facts and enumeration of rules allegedly violated.
 - c. Copies of all statements, reports, documents, official records, manuals, etc., that support the allegations. For all employee witnesses, the name, pass number and department must be clearly indicated. For non-employee witnesses, provide the address and telephone number.
 - d. Penalty sought. If the employee is already suspended or about to be suspended, state so clearly and prominently. When employees are suspended prior to the service of charges, the recommendation to prefer charges must be received by Labor Disputes Resolution within 48 hours.
2. Three sets of the recommendation to prefer charges against the employee are forwarded to Labor Disputes resolution (LDR). LDR prepares the formal charge documents. The formal charge documents will be returned to the department for personal service upon the employee. If the employee is already suspended, LDR will arrange for personal service. OATH requires proof of personal service.
3. The charge documents will include a date for an informal conference and/or a trial date at OATH, as determined by LDR. The informal conference is an effort to resolve the case without a formal trial. If the charges cannot be resolved in a conference and an OATH date was not already provided, then LDR will provide a trial date at OATH.
4. On the first scheduled hearing date, OATH usually requires a settlement conference immediately before the hearing. The formal hearing is before an Administrative Law Judge (ALJ). After the

close of the hearing, the ALJ issues a Report and Recommendation. If the ALJ sustains the charges, a penalty recommendation will be included. The penalties may be a suspension without pay for up to 60 calendar days; a fine not to exceed \$100; demotion in grade and title; or dismissal.

5. The ALJ's report is submitted to the Vice President, Labor Relations with the entire record. Either party, through their attorney, may submit comments regarding the ALJ report. The Vice President, Labor Relations, then issues a decision on the case. The Vice President, Labor Relations may accept, reject or modify the recommended penalty, provided the decision is consistent with the record from trial. This decision is final unless appealed by the employee.
6. The employee may appeal the decision of the Vice President, Labor Relations to either the Civil Service Commission or the New York State Supreme Court.

DISCIPLINARY CASES - NON-REPRESENTED EMPLOYEES

For purposes of discipline, a non-represented employee should be treated in the same manner as a provisional employee, e.g., an employee who holds no Civil Service status and is therefore an employee at will, subject to discipline without a hearing. Note, however, that as with provisional employees, non-represented employees with an underlying permanent competitive Civil Service title are covered by Section 75 of the Civil Service Law where management is seeking their dismissal from service.

DISCIPLINARY CASES - MANAGERIAL EMPLOYEES OF NYCTA, MaBSTOA, OR SIRTOA

MANAGERS COVERED

- Applies to full-time managers with more than one (1) year in a managerial title *not* covered in their managerial position by Section 75 of the Civil Service Law.

MANAGERS NOT COVERED

- Does not cover President's senior staff and those managers who report directly to the senior staff
- All temporary, probationary or part-time managers
- Provisional, non-competitive or other managers with less than one year as a manager
- All managers appointed from a competitive Civil Service List, certain veterans who served during time of war and certain volunteer firemen. These employees are covered by Section 75 of the Civil Service Law.
- Provisional managers with a permanent underlying competitive Civil Service title are covered by Section 75 of the Civil Service Law here management is seeking their dismissal from service.

MANAGERIAL STANDARDS

Managers should be aware that they are held to the highest standards in terms of abiding by and implementing NYC Transit rules, policies and procedures. Certain offenses will, absent unusual circumstances, lead to dismissal and/or demotion in the first instance. Such major offenses include but are not limited to the following types of misconduct.

- Gross incompetence
- Gambling on Transit property
- Feigning illness or disability
- Violation of MTA-New York City Transit rules and/or policies concerning drugs, controlled substances and/or alcohol
- Defacing, damaging, debilitating or destroying Authority property.
- Unauthorized or illegal use of any Authority property or conveyance
- Theft or stealing, including unauthorized use of Authority services. Serious violations of Criminal Law, whether on or off duty, which would impair the manner in which the person can perform his/her duties
- Insubordination
- Falsification of records
- Use or possession of firearms or other weapons without proper authority
- Unauthorized/excessive absenteeism or tardiness
- Inappropriate use of internet and/or e-mail
- Safety violations which place the public or NYC Transit employees in danger

RESPONSIBILITY

- Management's responsibility is to evaluate seriousness of offense and/or misconduct and determine appropriate action to be taken.
- To ensure uniform, equitable action throughout MTA-New York City Transit, management must first contact the Senior Director, Administrative Trials and Hearings, or his/her designee before any action taken except in serious offenses where immediate suspension may be necessary.

- If a manager is suspended between payroll weeks, he/she must be paid through the end of the payroll week and will be suspended without pay commencing the first day of next payroll week.
- Vice President of Labor Relations or his/her designee shall be provided with copies of all documents relevant to disciplinary hearings of any managerial employee.

PROCEDURES

A. In cases where a *penalty other than dismissal* is recommended the employee will be given written charges, which include a proposed penalty. The penalty may include the following:

- Written reprimand
- Suspension without pay for periods of full payroll weeks
- Demotion outside of the managerial ranks
- Change in status within the managerial ranks with a commensurate salary reduction for offenses meriting discipline

Within one (1) week of receipt of the charges, the manager may appeal in writing to his/her unit head or designee. If the charges are not appealed, the penalty will be implemented.

STEP I

- After a timely appeal, an informal meeting will be held with the managers unit head or designee.
- Manager at this meeting may offer documents and explain why he/she believes charges are not warranted and/or why penalty is inappropriate.
- Unit head or designee has discretion to interview other Authority employees to support either the manager or management's position.
- Unit head or designee shall issue a written decision.

STEP II

- Manager may appeal Step I decision in writing, within one (1) week of its receipt to his/her Department Head or designee.
- Written appeal may set forth reasons why manager believes charges should not be upheld or why penalty should be modified.
- The Department Head or designee has discretion to meet with the manager or other Transit employee.
- The Department Head or designee shall review Step I decision, the written statement if any and render a final decision in writing.
- Decision of Department Head or designee is final and cannot be appealed further within Transit.

B. In cases where the recommended penalty *is dismissal from service*, the procedures to be followed are:

- Provide manager written notice of charges, including recommended penalty of dismissal
- Manager may appeal in writing within two (2) weeks of receipt of charges requesting an informal hearing with his/her unit head or designee.
- Manager may be suspended without pay pending the informal hearing.
- If the first day of the manager's suspension does not commence at beginning of a payroll week, the

manager should be suspended with pay until the commencement of the next full payroll week when the suspension without pay will commence.

- For charges involving major safety violations, a manager may be suspended without pay immediately.

STEP I

- The manager shall be given an opportunity to respond to the written charges at an informal hearing.
- Informal hearing held before the unit head or designee
- The manager may submit documentation and/or give oral/written explanations in his/her defense.
- The unit head or designee has discretion to interview or ask for written statements from other Authority employees, including those identified by the manager, who have knowledge of the conduct.
- A written disposition of the Step I hearing will be sent to the Manager.
- The written disposition will include the findings and determination of the unit head or designee.
- If unit head or designee upholds dismissal recommendation, the penalty shall be implemented. If penalty is modified to reinstatement with or without pay, suspension of the full payroll weeks, demotion, etc., the Step I decision may be appealed.
- Appeal shall be in accordance with Step II procedures set forth below prior to implementation.

STEP II - APPEAL OF DISMISSAL

- Within two (2) weeks of receipt of Step I decision dismissing him/her manager has right to appeal in writing to the Vice President of Labor Relations.
- Vice President, Labor Relations shall appoint a manager to act as appeal officer to hear the Step II review.
- Appeal officer must be a manager with a higher title than terminated manager and must be equal to the rank of the manager who initiated the disciplinary action.
- The appeal officer should not work in the Division where the disciplinary action was initiated or have had any involvement in the disciplinary action.
- Dismissed manager will be notified in writing of the name, title, and business address for the appeal officer.
- Within two (2) weeks of the notice of the name and address of the appeal officer, the dismissed manager will have the right to submit a written statement in response to the Step I decision.
- Failure to submit a written statement within the two (2) week period shall be deemed an abandonment of the appeal and the Step I decision will be final.
- The appeal officer shall review the Step I decision in the written statement and issue a written decision within four (4) weeks of receipt of the written submission from the dismissed manager.
- The appeal officer, at his/her discretion, may choose to meet with the dismissed manager or others whom he/she believes can provide relevant information before reaching a final decision.
- If such a meeting is granted, the dismissed manager may be accompanied by an advisor of his/her choice.
- Such meetings are discretionary and are not required.
- If the appeal officer is not a Department Head, the determination at Step II, if approved by the head of the department in which the manager serves, shall be final and is not subject to further review within MTA NYC Transit.
- If the appeal officer is the Department Head, such approval is not required and the determination at Step II shall be final and not subject to further review.

Please see Policy Instruction for further reference at Appendix EE.

VIOLATIONS INVOLVING PROBATIONARY EMPLOYEES

- The probationary period in the TA is 12 months, exclusive of leave, and may be extended to up to 18 months in 3 month intervals.
- In MaBSTOA (OA), TWU covered employees serve a 12 month probationary period under Paragraph 6 of the August 25, 2003 OA/TA Surface Consolidation Implementation Agreement. That period may be extended to up to 18 months in 3 month increments. TSO covered employees also serve a one-year probation.
- *In both the TA and the OA, probationary employees are not entitled to disciplinary hearings with the following exceptions:*
 - A special probationary hearing is held for probationary employees in both the TA and OA with less than the minimum period of probationary service (less than 2 months of service after appointment or less than 4 months after promotion), where performance is deemed unsatisfactory and termination sought.
 - In a case where termination is sought before the end of the minimum period of probationary service described above, the department shall forward a recommendation to prefer charges for a special probationary hearing.
 - A provisional employee in the Department of Buses with more than a year of continuous satisfactory service in a title covered by the contract may appeal disciplinary actions through the contractual disciplinary procedure. However, such employee is not entitled to a hearing beyond the first year of service if the infraction occurs during a probationary extension.
- In both the OA and the TA, an employee who tests positive for drugs, alcohol, or any controlled substance is dismissed and has no right to restoration.

APPENDICES

APPENDIX A

MTA New York City Transit
Manhattan & Bronx Surface Transit Operating Authority

TO BE PREPARED
IN DUPLICATE

Application for Leave of Absence Due to Illness

DEPARTMENT _____ RC#/DIVISION _____ Date _____ 20 _____

Name _____ Title _____ RDO _____ Pass No. _____

Absent from _____, 20 _____, _____ A.M. to _____, 20 _____, _____ A.M. _____ P.M. inclusive for a total of _____ days, working _____ P.M.

I was unfit for work on account of illness during this period and request a paid/unpaid (circle as appropriate) leave of absence because (state nature of disability):

Did this disability arise as a result of a service connected incident? _____ Yes/No

Name of treating physician _____ (print) Address _____ (print) Telephone No. _____

Employee's Signature Received: _____ Supervisor Pass No. _____ Date _____

Failure to submit this application within three (3) days after returning to work will result in loss of pay for the period in question and may also result in disciplinary action against the employee. Where absence is for more than two (2) days, this certification must be completely filled out by the attending physician before sick leave with pay will be approved. OA employees should be guided by the applicable section of the collective bargaining agreement to determine when a physician's certification is required.

DOCTOR'S CERTIFICATION

I hereby certify that _____ was treated by me on the date/s and for illness noted below:
Employee's Name

Dates of treatment: Home _____ Office _____ Hospital _____

DIAGNOSIS/OBJECTIVE FINDINGS _____

TREATMENT/PROGNOSIS
AND EXPECTED DATE
OF RETURN _____

I further certify that this illness so incapacitated this employee that he/she was incapable of performing his/her duties during the period from: _____ to _____, and that the information in this section, which will be used for payment purposes, is truthful.

Physician Stamp

Date _____

Physician's Signature/Tax ID No. _____

DEPARTMENTAL REPORT

DEPARTMENTAL REFERRAL TO ABSENTEE CONTROL

REASON FOR REFERRAL

(check box if appropriate)

Remarks _____

☐ Review for incomplete certification☐ Review for fraudulent/alterd certification☐ Review - is period of absence consistent with illness? Reviewed by _____☐ Other: _____

Name

Date

LAST 12 MONTH USAGE REPORT

SICK LEAVE BANK BALANCE

ACTION ON APPLICATION

Substantiated Unsubstantiated

Instances

Instances

Prior to

Post

Request

Request

Approved Paid _____ Days _____ Hours

Unpaid _____ Days _____ Hours

Disapproved _____ Days _____ Hours

Sick Leave Control List _____ Yes/No Signature _____

Department Head or Designee

Reason for Disapproval: _____

Signature _____

APPENDIX B

Appendix B

PROCEDURE TO ADDRESS EXTENDED AWOL /ABANDONMENT OF POSITION

Our collective bargaining agreement with Transport Workers Union, Local 100 provides that employees who have been absent without leave (AWOL) for five consecutive calendar days shall be presumed to have abandoned their positions, and as such will be charged and recommended for dismissal from service.

In accordance with those agreements, the following procedure shall apply to all hourly-rated operating employees and shall be implemented against any such employee who has been AWOL for five consecutive calendar days.

1. When an employee is AWOL for five consecutive calendar days, the manager responsible for establishing that employee's pay status shall notify the Director of Labor Relations for their Department/ Division that the AWOL employee has abandoned his/her position and request disciplinary action be taken for dismissal from service. (See Attachment A). Timekeeping records should reflect that the employee is AWOL and should at no time be changed to "held out-of service." Suspension or "leave of absence without pay," unless as the result of a resolution of the disciplinary action in accordance with the Office of Labor Relations.
2. The Director of Labor Relations will prepare a letter notifying the AWOL employee that he/she has abandoned his/her position (Attachment B), and will send it to the employee, via Express Mail, along with a Disciplinary Action Notification (DAN) seeking dismissal (Attachment C), and a Disciplinary Action Notification Instruction sheet (Attachment D). A copy of the contents of the mailing will also be sent to the appropriate union office.
3. Upon receipt of the mailing, the AWOL employee will have five days to either accept or appeal the dismissal recommendation. If the employee appeals, he/she must attend one of the scheduled hearing dates. Failure to respond within five days, or to attend one of the scheduled hearings will result in immediate implementation of the proposed penalty.
4. Should the AWOL employee appear to any time after the Director of Labor Relations has been notified that he/she has abandoned his/her position, such employee **must not be returned to work**, and the appropriate Labor Relations office must be contacted. Labor Relations will then determine whether the employee should be placed in a "without pay" status while the abandonment process proceeds, or whether some other action needs to be taken. In either case, Labor Relations will notify the appropriate department representatives as to any changes in the employee's status.

This procedure supersedes any previously issued Extended AWOL Procedure and is effective immediately. The time limits set forth in the procedure must be strictly complied with.

Please take necessary action to ensure that this procedure is adhered to in your department.

Memorandum



New York City Transit

Date: April 15, 2008

To: Director of Labor Relations

From: RC Head of Timekeeping Manager

Re: Abandonment of Position

This is to inform you that Name, Title, Pass#, was scheduled to report for duty on (first date of (absence) and has neither telephoned, nor in any way contacted this department of his/her whereabouts or his intention to return to work. As such, he has been absent without leave for five consecutive calendar days and has therefore abandoned his position.

Please initiate disciplinary action to dismiss this employee from service.

Attachment A



New York City Transit

Sent Regular and Express Mail

Return Receipt Requested

Receipt = _____

Re: Notice of Extended AWOL

Abandonment of Position

Date _____

Employee's Name, Pass#, Title

Address _____

Dear Mr./ Ms. _____:

The records of the Department Division indicate that you have been absent without leave since _____, a period of at least five(5) consecutive calendar days.

You are hereby notified that pursuant to Section 2:11 of the Collective Bargaining Agreement you are presumed to have abandoned your position. As a result, disciplinary action has been initiated seeking your dismissal.

Enclosed is a Disciplinary Action Notification (DAN) containing the charges and proposed penalty. Please read the "Instruction Sheet" attached to the DAN and proceed accordingly.

If you have any questions you should contact the Transport Workers Union (TWU), Local 100 at 212 873-6000, or _____, Office of Labor Relations at 646 252-XXXX.

Sincerely,

Director of Labor Relations

cc: TWU

Attachment B



Department: _____

Case No: _____

Name: _____ Pass No: _____ Title: _____

Reported By: _____ Title: _____ Date: _____

Statement of Facts: On _____ you failed to report for duty or notify New York City Transit of your intention to be absent. For the period _____ to the present, you have continued to be absent without leave. Since you have been absent without leave for 5 consecutive calendar days you are presumed to have abandoned your position as set forth in Section 2.11A of the Collective Bargaining Agreement.

Recommended Penalty: _____ **DISMISSAL FROM SERVICE** _____ Suspended Date: _____

Violation: Rule 5.(a), 5.(c), TA/TWU Contract §2.11A

Supervisor's Signature

Date

Employee Notified: _____ Union Notified: _____

Employee's Signature

Date

Union Rep.'s Signature

Date

Employee Acceptance

I accept the above decision.

Employee's Signature

Date

Union Representative's Signature

Date

Employee Appeal

Appeal of this notification must be made within five days of receipt of notification

I do not accept the above decision and request a meeting.

Employee's Signature

Date

Union Representative's Signature

Date

Date Step I meeting scheduled _____ / ____ / 20____ , _____ / ____ / 20____

Employee's Signature

Step 1 Meeting Held

Action: _____ Sustained Penalty: _____ Step Date: _____

Date RC Head/ Designee's Signature

Date

Appeal must be made within five days of receipt of Step 1 decision.

I accept this above Step 1 decision.

Employee's Signature

Date

Union Representative's Signature

Date

I appeal this Step 1 decision.

Employee's Signature

Date

Union Representative's Signature

Date

Date Step II Meeting Scheduled _____

Employee's Signature

Employee must either accept or appeal the above decisions within the time limits set. Failure to do so will result in implementation of the decision.

end of report

Attachment C - TWU



New York City Transit

Office of Labor Relations

Disciplinary Action Notification Instruction Sheet (Department of Subways, Department of the Executive Vice President)

Extended AWOL ABANDONMENT OF POSITION

Attached are two (2) copies of your Disciplinary Action Notification. Your signature is required on one of these copies; the second copy is for your records.

Within five (5) days after receipt of this notification, you **MUST** do one of the following:

1. Accept the charges and penalty of Dismissal from Service, or
2. Appeal the disciplinary action.

Acceptance:

In the event you wish to accept the charges and penalty of dismissal, you must sign as indicated in the "Employee Acceptance" area of the DAN form and immediately contact your General Superintendent's office to make arrangements to surrender your pass and return any Transit property in your possession.

Appeal:

To appeal the charges and penalty, you must sign the "Employee Appeal" section of the DAN form above "Employee Signature" to request a meeting (Step 1 Hearing). If you elect to appeal, you must appear for your Step 1 Hearing on either of the two hearing dates indicated on the DAN. You will not receive another notice to appear for a Step 1 Hearing. **Failure to appear on either of the scheduled hearing dates will be deemed abandonment of your appeal and result in immediate implementation of the proposed penalty.**

Prior to the start of the Step 1 Hearing, you will be given an opportunity to provide a written explanation of the reason for your absence as well as any documentation in support of that explanation.

Once you have signed a copy of the DAN, the signed copy must be returned to the Office of Labor Relations, 2 Broadway, NY, NY 10004 **within five (5) days of receipt of this notification.** DAN's may be returned either by mail, or in person between the hours of _____ and _____.

Failure to sign and return a copy of a DAN within five (5) days of receipt will be deemed an abandonment of your right to appeal, and the proposed penalty will be implemented.

If you have any questions, please contact _____ at () _____

Attachment D-

APPENDIX C

Letter from the President

July 16, 2007

Re: Alcohol Free and Drug Free Workplace

Dear Fellow Employee:

MTA New York City Transit ("NYC Transit") is committed to operating and maintaining an alcohol-free and drug-free workplace to provide a safe environment for its passengers and employees.

NYC Transit policies, consistent with federal and state law, prohibit all employees from using, possessing or being under the influence of alcohol during an employee's tour of duty, while an employee is on NYC Transit's premises or otherwise engaged in NYC Transit business and/or when such use would make them unfit to report for duty or to be on duty. State law also prohibits the use of alcohol by a bus operator within six hours of beginning service, regardless of any effects. NYC Transit policy prohibits the unlawful manufacture, distribution, dispensation, possession or use of controlled substances at the workplace. In addition, the unlawful use of any drug or controlled substance at any time is also prohibited.

NYC Transit requires all employees to abide by the terms of these policies as a condition of employment. Violation of the alcohol, drugs and controlled substance policies is considered to be a major offense. Employees who violate these policies will be disciplined, with punishment up to and including termination from employment.

NYC Transit performs drug and alcohol tests of employees who perform safety-sensitive functions pursuant to Federal Transit Administration regulations. All NYC Transit employees are subject to drug and alcohol testing in additional circumstances pursuant to internal policy and/or collective bargaining agreements. I encourage you to familiarize yourself with policies covering your title. I also encourage you to read and be familiar with MTA New York City Transit's Drug and Alcohol Policy Statement. As indicated in that statement, if you have any questions concerning these policies, you should contact the Vice President of Human Resources, Kevin Hyland, at (347) 643-8320.

Also, be advised that if you are ever placed under arrest, while on or off duty, for alleged violation, among other things, of any criminal drug statutes, you are required to notify your immediate supervisor, in writing, immediately. This applies to all incidents of an alcohol or drug related arrest. Upon conviction of any criminal drug statute, you are required to notify your immediate supervisor, in writing, within five (5) days of such conviction. An arrest, conviction or failure to report such may lead to disciplinary action.

All employees share in the responsibility for adhering to and enforcing these policies. Let's work together to maintain an alcohol-free and drug-free workplace. Your safety and the safety of our customers depend on it.

Sincerely,



Howard H. Roberts, Jr.
President



APPENDIX D

WORKPLACE VIOLENCE PREVENTION PROGRAM

FOR

THE NEW YORK CITY TRANSIT AUTHORITY

and

**MANHATTAN AND BRONX SURFACE TRANSIT
OPERATING AUTHORITY**

March 7, 2007

WORKPLACE VIOLENCE PREVENTION PROGRAM FOR THE NEW YORK CITY TRANSIT AUTHORITY AND MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY

INTRODUCTION

On June 7, 2006, New York State passed Article 27-b of the Labor Law, entitled New York Workplace Violence Prevention Law. This law requires public employers with at least 20 full time permanent employees to perform a workplace evaluation or risk assessment at their workplaces to determine the risk of “occupational assaults and homicides.” Employers are required to develop and implement programs to minimize the hazards found in the evaluation and provide annual workplace violence prevention and safety training to all employees.

The Authority has a long-standing practice of promoting a safe and secure work environment for its employees, as evidenced by its very low incidents of workplace violence.¹ Accordingly, all employees are responsible for using safe work practices, for following all directives, policies, and procedures, and for assisting in maintaining a safe and secure work environment. Consistent with this policy and the law, the Authority prohibits any and all forms of workplace violence.

What is Workplace Violence?

Workplace Violence is defined by the New York State Department of Labor (“DOL”), the State agency charged with the enforcement of this law, as “any physical assault, threatening behavior, or verbal abuse occurring in the work setting.” According to the DOL, “[a] workplace may be any location either permanent or temporary where an employee performs any work-related duty...(including) the buildings and surrounding perimeters, including the parking lots, field locations...and traveling to and from work assignments.”

The DOL has listed the following as examples of Workplace Violence:

- Non specific threats by employee
- Specific threats of violence by employee
- Threats of violence directed against an employee by a non employee
- Violent confrontation by a spouse or significant other with an employee over a personal/domestic dispute while at work
- Threats or threatening conduct by disgruntled employee or by an intruder

¹ The New York City Transit Authority and the Manhattan and Bronx Surface Transit Operating Authority are herein collectively referred to as “the Authority.” The New York City Transit Authority, when referenced individually, is herein referred to as “the Transit Authority.” Similarly, Manhattan and Bronx Surface Transit Operating Authority, when referenced individually, is herein referred to as “MaBSTOA.”

The safety and security of our employees is a pressing concern of the Authority. Threats of Workplace Violence, intimidation, harassment, coercion, or other threatening behavior against employees, visitors, customers or other persons authorized to be on Authority property by anyone on Authority property will not be tolerated.

WORKPLACE VIOLENCE RISK ASSESSMENTS AND EVALUATION

The Workplace Violence Prevention Law sets forth a number of risk factors or situations for employees to consider that might place employees at risk of workplace violence. The Authority considered the following workplace settings and employment situations in assessing the potential for risk of workplace violence:

- Contact with the public
- Working late or early morning
- Exchange of money with the public
- Working alone or in small numbers
- Duties performed at a specific work location
- Duties that involve guarding valuable property
- Lighting in parking areas
- Access to the workplace
- Recognizing and managing escalating hostile and aggressive behavior.

RISK FACTORS IDENTIFIED

The following risk factors are identified among the following classes of employees: (1) Operating Employees (Service and Non-service) and (2) Administrative Staff. Those evaluations are as follows:

1 Operating Employees: (a) Service (Train Operators, Bus Operators, Conductors, Station Agents, Track Workers, etc. – employees with direct contact with members of the public.)

Workplace Settings/Employment Situations:

°Authority Operating employees may work alone and at different tours, including tours that begin late at night and end early in the morning.

°In the case of Bus Operators, Track Workers, Signal Maintainers, Road Dispatchers, etc., there is no access control to their work locations (buses, tunnels, streets, etc, are either available to the public or could be accessed by a member of the public). Some operating employees are in direct contact with the riding public.

°Some employees sometimes work with co-workers who have engaged in arguably violent acts. Some co-workers have had disciplinary actions for incidents such as harassment, threats or assaults, but may have been returned to work after completion of disciplinary action(s) pursuant to procedures in applicable collective bargaining agreements or state law.

Potential Risk Factors: The risks factor identified for this class of Authority employees include assaults, specific and non-specific threats of violence, intimidation, and harassment by non-employees and, sometimes, by co-workers; confrontation by a spouse or significant other over domestic or personal disputes; threats of projectiles; explosive/incendiary events; and (in the case of bus operators) road rage. However, data of actual incidents reflect a decline in the number of workplace violence incidents (as defined above). Actual incidents of workplace violence are quite rare considering both the size of the workforce and the fact that workers in many job titles work three shifts. Potential risk factors have also been addressed by additional security features designed to protect against such incidents.

Operating Employees: *(b) Non-Service (Employees working in Barns, Depots, Yards and other Facilities who do not regularly come in contact with members of the public):*

Workplace Settings/Employment Situations:

°Some of these employees work late night and/or early morning shifts. Some work alone in their work locations.

°Some employees may sometimes work with co-workers who have arguably engaged in violent acts on or off duty. Some co-workers have had disciplinary actions for incidents such as harassment, threats or assaults, but have been returned to work after disciplinary action(s) processed pursuant to procedures in applicable collective bargaining agreements or state law.

Potential Risk Factors: Non-employees being able to enter a facility (e.g., through a fence) and physically assaulting, threatening, intimidating, or harassing an employee; co-workers engaging in similar behavior; disgruntled employees (who are the subject of disciplinary action or who have been dismissed) assaulting employees; and explosive/incendiary events. Data of internal incidents reflect one double homicide several years ago where a former employee was arrested for the crime. Potential risk factors have been addressed by improving access control at Authority facilities.

2. *Administrative (including Administrative Staff, Supervisors and Managers):*

Workplace Settings/Employment Situations:

°2 Broadway: Formalized disciplinary action for Transit Authority employees is processed by the Transit Authority's Office of Labor Relations in this building. Authority executive and administrative offices are located there as well.

°180 Livingston Street: The Authority's Division of Human Resources' subdivisions of Employee Benefits, Departmental Operations, Management Services, Operations Training and Occupational Health Services are located in this building. As such, pre-employment screening is done here. As such, pre-employment screening, employee training, medical assessments, and administration and support activities take place at this location. Some employees in that building work late night shifts.

°505 Fulton Street: The Transit Adjudication Bureau (“TAB”), which processes and hears cases of summonses issued on Transit Authority subways, is located in this building. Non Authority employees, therefore, frequent this building. The Employee Assistance Program (“EAP”), which administers the Authority’s drug and alcohol rehabilitation program, is also located here. Employees who fail to comply with the EAP’s program are discharged from such program, which results in the Authority initiating disciplinary action, seeking dismissal, for such non compliance.

°130 Livingston Street: The Authority’s Law Department is located in this building. This department handles a myriad of different legal issues for the Authority, from general litigation involving outsiders (torts, commercial litigation and contracts) to litigating against Transit employees (labor and employment), and making determinations for payments (workers’ compensation and related matters). Individuals with tort claims against the Authority are frequently in this building. Employees in this Department travel to court and administrative hearings in the five boroughs of New York City.

The Transit Authority’s Department of Subways Office of Employee Policy and Compliance is located in this building, as well as time keeping and other operational support services. The Employee Policy and Compliance office conducts sensitive investigations of employees who violate Transit Authority rules and regulations and may recommend that disciplinary action be taken against such employees who are found to have violated such rules, while other personnel adjust time keeping and related issues.

The Authority’s Office of Equal Employment Opportunity is also located at 130 Livingston Street. This office conducts highly sensitive investigations involving claims of unlawful discrimination and harassment. As such, complainants and/or witnesses routinely frequent that office. Other administrative, training and operational support offices are also in this building

Potential Risk Factors: These Authority buildings pose a very low risk of workplace violence from non-employees due to the presence of security in their lobbies. Also, the security feature on most of the main entrance doors to these offices allows only authorized employees to gain entry by swiping employee passes on such doors. Non-employees are escorted to designated floors. Potential risk for workplace violence by non-employees also exists at TAB and, by extension, at the EAP offices because they are located on the same floor. However, security personnel and metal detection devices are utilized at TAB. Another potential risk for workplace violence at these locations is from co-workers or disgruntled employees. However, experience indicates that risk of workplace violence is very low.

METHODS TO PREVENT AND CONTROL WORKPLACE VIOLENCE

The Authority currently has security and operations procedures in place to ensure worker/employee safety in the workplace. It has also undertaken extensive investments, post-September 11, 2001, to further enhance the security of the transit system in its entirety. This attention to physical security, access control, and operational procedures to enhance overall security will have the ancillary beneficial effect of preventing workplace

violence. Some of the methods currently in place or undertaken to prevent and control workplace violence include the following:

Administrative Controls

- Pre-employment screening:*** The Authority conducts background checks on all new employees, including criminal checks.

- Termination Procedures:*** The Authority initiates disciplinary charges on all cases involving workplace violence, such as assaults and threats of assaults, seeking dismissal, in all such cases. If an employee is arrested off-duty, he or she must report such arrest and a determination is made whether disciplinary charges should be brought. The Authority seeks a penalty of dismissal in all cases involving assault, subject to procedures contained in collective bargaining agreements that provide for a detailed disciplinary procedure, usually with an arbitration procedure.

- Employee uniforms and passes:*** Uniformed (operational) employees are required to be in uniforms that identify them as Authority employees at all times when on duty. Also, all employees are required to prominently display their signed employee identification cards ("pass") when entering Authority property. Furthermore, employees are required to have their passes on their person while on Authority property, whether on or off duty, and must be prepared to present such passes for inspection to any Authority employee or authorized person upon request.

- Employee Training:*** The Authority currently has the following employee training in place to address security procedures and workplace violence:

- °**Security Awareness(Eyes and Ears) Training:** Focuses on every employee's duty to report suspicious activities at Authority work locations. Security signs promoting awareness of issues such as employee identification/pass requirements, alertness to strangers lacking credentials, workplace safety, workplace violence, and proper use of emergency exits are also posted on Authority properties;

- °**Station Agent Inductee Training Program and Customer Assistance Training:** Transit Authority Station Agents are given these courses that focus on customer relations and means of dealing with angry and emotional customers;

- °**Revenue Collection Training Program.** This includes training on the Authority's Rules and Regulations, courtesy to riders and co-workers, and avoiding threats, assaults, battery, and profanity;

- °**Supervisor Core Program:** Emphasis on recognition and prevention of workplace violence;

- °**Essentials of Management I Training:** Emphasis on recognition, prevention, and reporting of workplace violence;

- °**Leadership Summit – PEACC:** Emphasis on recognition, prevention, and reporting of workplace violence as well as conflict resolution;

°Conductor Induction/Train Operator Induction Training: This includes training on the recognition, prevention and reporting of workplace violence.

°Dispatcher's Induction Training: (Same as above);

°Tower Operator's Induction Training: (Same as above);

°Train Service Supervisor Induction Training: (Same as above);

°Inductee Orientation Training for Cleaner T/A (Same as above);

°Respect in the Workplace Training: Given to all new bus operators and bus maintainers, it includes training on workplace violence and dealing with members of the public.

°New Employees Orientation – Cleaner, Car Inspector, Road Car Inspector, Maintenance Supervisor, Level I (Car Equipment);

°Transit Property Protection Agent Training Course: Incorporates training on workplace violence, non-violent self defense/conflict resolution training, and access control;

°Transit Property Protection Supervisor Training: Same as the Transit Property Protection Agent Course;

°Department of Buses Security Awareness Training Program: This provides Department of Buses employees with information and training needed in the event of a terrorist threat or attack;

°Newsletters and brochures, as well as posters, to communicate safety/security awareness and prevention of workplace violence;

- Administrative control review and follow up on security related issues. For example, as a requirement from the Transportation Security Administration (“TSA”), the Transit Authority conducted a Baseline Assessment and Security Enhancement (“BASE”) review and will continue to do so annually to identify any potential security gaps and ways to enhance overall security.

- Updating and disseminating letters from the president and Authority bulletins on harassment, intimidation, physical violence and threats to employees.

- Assault mitigation program for Bus Operators: Working together with the Bus Operator Action Committee (“BOAC”) – a joint labor-management initiative – this program focuses on reducing assaults on Authority bus operators. BOAC and other departments within the Authority were successful in lobbying the New York State Legislature to make assaults on an Authority bus operator, Train Operator, or Conductor a felony. Publication of this statute to inform the public of the serious consequences of assaulting Authority employees in the performance of their duties has been undertaken by posting notices and stickers on Authority buses and subway cars.

- Non-violence Self Defense/Conflict Resolution Training: An employee’s best protection from workplace violence is to have knowledge and understanding of the warning signs and risk factors that contribute to potential workplace violence. In addition

to the employee training currently in place, all Authority employees have or will receive the "Employee Guide to Workplace Violence: Prevention Response and Recovery" issued by the Federal Transit Administration's National Transit Institute; this material is a comprehensive guide on workplace violence in the transit setting and it provides useful suggestions on what to do when confronted with workplace violence.

Access Controls and Physical Improvement

•***Fencing and other Physical Barriers:*** Most employee work locations, such as barns, yards, and depots are secured with fences to prevent unauthorized entry. Substantial funding is in place to continue with fencing projects, installation of jersey barriers, rerouting vehicle entrances, relocation of Transit Property Protection booths, etc. to continue enhancing security around the physical perimeters of Authority facilities.

•***Access Control:*** Most entrances to Authority properties (including barns, yards, and depots) are manned by Transit Property Protection Agents ("TPPA") who physically inspect employee photo identification before allowing access. Visitors (contractors, suppliers, guests) to these locations are also required to be signed-in by an authorized employee, at the entrances manned by a TPPA, before being allowed on Authority properties. Visitors are further required to display visitor identification passes while on Authority property.

In addition to TPPAs manning access to Authority buildings and facilities, many entrances to Authority property have employee pass entry systems such as turnstiles, door swipes, or locked facilities. The Authority has allocated additional sums of money to improve access controls in employee crew rooms, token booths, control rooms and command centers and the installation of rapid roll-up doors at bus facilities. All Authority facility with cash, e.g. token booths, is physically locked at all times.

•***Video or CCTV Surveillance System*** is used in some work locations, and a pilot program has been introduced on buses to further protect Authority employees and the public.

•***Security Lighting:*** In connection with capital projects, lighting improvements at work locations and Authority facilities are continuing to be made.

REPORTING INCIDENTS OF WORKPLACE VIOLENCE

Employees are reminded that it is critical that all workplace violence incidents be reported to the appropriate personnel within the Authority. Failure to report incidents of workplace violence, even if viewed as minor, may affect the safety of employees and Authority customers. Therefore, employees are required to do the following:

•**General Reporting Responsibilities:** All incidents of workplace violence, threats of workplace violence, or observations of workplace violence, occurring during working hours at the Transit Authority (except the Department of Buses) should be immediately reported to the Transit Authority's Office of Employee Policy Compliance at (718) 694-

5486. Such incidents occurring during off hours should be reported to the Transit Authority's Department of Subways Rail Control Center Communications Desk at (212) 712-4480. Authority employees in the Department of Buses should immediately report all incidents of workplace violence at (718) 566-3624 during work hours or at (718) 927-7777 during non-work hours. Additionally, all employees are encouraged to report behavior that they reasonably believe poses a potential for workplace violence as defined above. It is important that all employees take this responsibility seriously to effectively maintain a safe working environment. Another area where violence can occur is where an employee may be in a situation where an order of protection has been issued against a non employee. The best way to protect against any encounter that could be a violation of such order while at work is to ensure that access control to Authority facilities is strictly enforced and that employees report any behavior they reasonably believe poses a security threat or a potential for workplace violence.

- Imminent or Actual Violence: Any employee experiencing or witnessing imminent danger or actual violence should immediately call 911 and/or the numbers listed above for the Departments of Subways and Buses, respectively. If such report is being made by telephone from a remote location to an Authority employee, identify yourself, give your exact location, request immediate assistance, and explain the situation.

- Commission of a Crime: All individuals who believe a crime has been committed should contact the appropriate law enforcement agency and report the incident.

All Authority Department Heads, managers and supervisors are responsible for implementing and maintaining this program in their work areas and for answering employee questions about the program.

A copy of this program should be made available to employees at their request.

APPENDIX E

Letter *from the President*

December 2007

Re: Respectful Workplace Policy

Dear Fellow Employees:

Any organization that aspires to greatness must incorporate respect into every aspect of its existence. That means mutual respect among management, labor leaders, supervisors, and employees and respect for our customers.

In order to receive respect, of course, you have to be competent at your job and show respect for others. Either requirement, however, is under the control of each and every one of us. We can work harder at our jobs and seek additional training as necessary. We can always treat others with the respect that we would like to be shown.

Furthermore, showing someone respect does not require that you agree with them on any particular issue or in general. As a matter of fact, the need for respect grows as the degree of disagreement increases. And failing to show someone respect because he or she disagrees with you is a childish and immature act.

Unfortunately there have been two recent situations where disciplinary action has been initiated concerning failures to show proper respect to fellow employees.

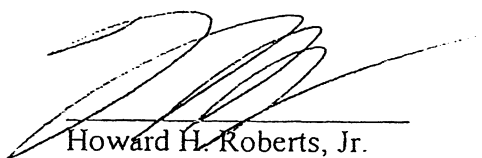
One case involved a claim of sexual harassment of an employee by a supervisor, and the other involved the use of a hateful symbol by an employee toward a supervisor. In both disciplinary actions, termination is being sought.

What I want to make absolutely clear is that anyone who exhibits the serious degree of disrespect inherent in sexual harassment or the use of hateful speech and symbols will not be tolerated in this organization.

To emphasize my commitment to maintaining a work environment where every individual is treated with respect and dignity, my May 2007 letter regarding Respect for Fellow Employees has been converted to the attached Policy/Instruction establishing a Respectful Workplace Policy for the agency.

Everyday, in everything that we do, we must show respect to and do our best to inspire our fellow employees. If we all try to do that, there is nothing this organization cannot accomplish.

Sincerely,



Howard H. Roberts, Jr.
President

APPENDIX F

Letter *from the President*

February 2008

RE: EQUAL EMPLOYMENT OPPORTUNITY POLICY

Dear Fellow Employees:

It has been and will continue to be the policy of the MTA New York City Transit, including MaBSTOA and SIRTOA, to be an Equal Opportunity Employer. In keeping with this Policy, MTA New York City Transit will continue to administer all personnel policies, practices, and benefits of employment in a non-discriminatory manner. Equal Employment Opportunity (EEO) exists when employment decisions are made without unlawful consideration being given to race, color, religion, creed, sex, national origin, age, disability, predisposing genetic characteristics, marital or military status, sexual orientation, and arrest or conviction record.

Discrimination is also prohibited with regard to terms and conditions of employment, including policies and practices affecting:

- Recruitment, Hiring and Placement
- Assignments and Working Conditions
- Performance Evaluation
- Disciplinary Actions, Layoff, Recalls or Terminations
- Training and Educational Programs
- Compensation or Benefits, and/or
- Promotions, Demotions or Transfers

It is the policy of MTA New York City Transit, in accordance with applicable law, to provide reasonable accommodations to qualified applicants and employees with disabilities to enable them to participate fully in all the terms, conditions and privileges of employment.

MTA New York City Transit also expressly prohibits any form of unlawful harassment based on race, color, religion, creed, sex, national origin, age, disability, predisposing genetic characteristics, marital or military status, sexual orientation, arrest or conviction record, or any other legally protected basis.

We have established an Equal Employment Opportunity Program designed to ensure equality of opportunity for all employees and applicants for employment. All managers and supervisors share responsibility for implementing the goals of the Equal Employment Opportunity Program, and their performance toward achieving these goals will be measured in the same manner as their performance toward other business goals. MTA New York City Transit is proud of its record in promoting equal employment opportunities and will continue in its efforts to ensure the fuller utilization and development of previously underutilized human resources.

February 2008

EQUAL EMPLOYMENT OPPORTUNITY POLICY (Continued)

Acts of unlawful discrimination and unlawful harassment by employees are inappropriate and will not be tolerated. Behavior of this nature is a form of misconduct and is subject to disciplinary action up to and including termination of employment. Joel C. Andrews, Chief Officer, MTA New York City Transit Office of Equal Employment Opportunity, is responsible for coordinating MTA New York City Transit's EEO Program. Any employee or applicant for employment who believes that he/she has suffered unlawful discrimination or harassment should immediately contact his/her supervisor, Department EEO Liaison, and/or Mr. Andrews at 130 Livingston Street, 3rd Floor, Brooklyn, New York 11201. Mr. Andrews can be reached by telephone at (718) 694-1730.

An employee or applicant may also contact the U.S. Equal Employment Opportunity Commission or the New York State Division of Human Rights.

In all cases, confidentiality will be maintained throughout the investigation of a complaint to the extent practical and consistent with MTA New York City Transit's obligation to undertake a full inquiry and to make a determination.

Managers and supervisors shall notify the Office of EEO of all complaints of employment discrimination and discriminatory harassment, as soon as they become aware of such complaints. Supervisors who become aware of unlawful discrimination or unlawful harassment must take immediate action to stop such acts.

Reprisal against or interference with an employee or applicant's right to file a complaint constitutes a violation of this Policy. Any employee who willfully engages in such conduct shall be subject to disciplinary action, up to and including termination.

I am personally committed to both the principles and spirit of Equal Employment Opportunity. Therefore, I encourage all of you to join me in making MTA New York City Transit the model of our industry.

This Policy is to be posted in prominent locations throughout all MTA New York City Transit facilities.

Sincerely,



Howard H. Roberts, Jr.
President

APPENDIX G

Letter *from the President*

March 2008

RE: SEXUAL AND OTHER DISCRIMINATORY HARASSMENT - Revised

Dear Fellow Employees:

Sexual and other discriminatory harassment in the workplace will not be tolerated within MTA New York City Transit, including MaBSTOA or SIRTOA. It is MTA New York City Transit's policy that all employees and applicants for employment have a right to a work environment that is free from discriminatory harassment in any form. MTA New York City Transit is committed to maintaining such a work environment. Such harassment may also constitute a violation of federal and/or state law.

Sexual Harassment

Sexual harassment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, and other behavior of a sexual nature, when submission to such conduct is made implicitly or explicitly a term or condition of an individual's employment; submission to or rejection of such conduct by an individual is used as the basis for personnel decisions; or such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile or offensive working environment. Examples of other sexually harassing conduct include sexually degrading words used to describe an individual; the display in the workplace of sexually suggestive objects or pictures. The use of the email system to engage in any of the above conduct is also strictly prohibited.

Sexually harassing conduct in the workplace may also create a hostile work environment, whether it be in the form of physical or verbal harassment, and regardless of whether committed by supervisory or non-supervisory personnel. This includes, but is not limited to: repeated offensive or unwelcome sexual flirtations, advances, propositions; and continued or repeated verbal abuse of a sexual nature, or graphic verbal commentaries about an individual's body.

No manager or supervisor shall threaten or insinuate, either explicitly or implicitly, that an employee's submission to, or rejection of sexual advances or other conduct of a sexual nature, will in any way influence any personnel decision regarding that employee's employment, wages, promotional opportunities, assigned duties, shifts, or any other condition of employment or career development.

Discriminatory Harassment

Discriminatory harassment is defined as any type of conduct based on race, color, religion, creed, sex, national origin, age, disability, martial or military status, sexual orientation or any other legally protected basis, that has the purpose or effect of unreasonably interfering with an individual's work performance, or creating an intimidating, hostile or offensive working environment.

March 2008

SEXUAL AND OTHER DISCRIMINATORY HARASSMENT (continued)

Examples of such prohibited conduct include, but are not limited to, use of racial epithets, ethnic jokes, comments, innuendo, or other commentary made to demean or embarrass, obscene or harassing telephone calls, emails, letters, notes or transmission of derogatory, demeaning or hostile materials.

Acts of sexual and other discriminatory harassment by our employees are inappropriate and will not be tolerated. Behavior of this nature is a form of misconduct and is subject to disciplinary action up to and including termination. Joel C. Andrews, Chief Officer, MTA New York City Transit, Office of Equal Employment Opportunity, is responsible for coordinating MTA New York City Transit's EEO Program. Any employee or applicant for employment, who believes that he/she has suffered unlawful discrimination or harassment, should immediately contact his/her supervisor, Departmental EEO Liaison, and/or Mr. Andrews at 130 Livingston Street, 3rd Floor, Brooklyn, New York 11201. Mr. Andrews can be reached by telephone at (718) 694-1730.

The U.S. Equal Employment Opportunity Commission or the New York State Division of Human Rights may also be contacted if unlawful sexual or discriminatory harassment is claimed.

In all cases, confidentiality will be maintained throughout the investigation of a complaint to the extent practical and consistent with MTA New York City Transit's obligation to undertake a full inquiry and to make a determination.

Reprisal against or interference with an employee or applicant's right to file a complaint constitutes a violation of this Policy. Any employee who willfully engages in such conduct shall be subject to disciplinary action, up to and including termination.

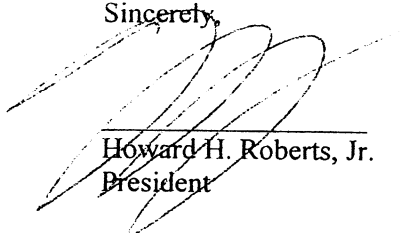
Managers and supervisors shall notify the Office of EEO of all complaints of sexual and/or other forms of discriminatory harassment as soon as they become aware of such complaints and must take immediate action to stop such harassment.

Discriminatory harassment in the workplace by any employee:

- Will result in disciplinary action, up to and including termination, and
- May lead to personal legal and financial liability

This Policy is to be posted in prominent locations throughout all MTA New York City Transit facilities.

Sincerely,



Howard H. Roberts, Jr.
President

APPENDIX H

Eileen Sullivan
Director
TWU Local 100
Fax # (212) 721-6526

APPENDIX I

CASE SUMMARIES

Customer Complaints:

1. A Station Agent who failed to follow proper procedure and referred to a customer as “bitch” when rejecting Free Transportation Certificates presented for a group of approximately 100 children and adult staff was given a ten-day suspension based on the customer’s credible testimony. *In the Matter of Wilfred Blackwood (06-2742-0231).*
2. In a second customer complaint involving improper encoding of a MetroCard and use of profanity, heard on the same day against the same Station Agent charged in the case above, charges were dismissed due to the customer’s failure to appear. While the Arbitrator acknowledged the documentary evidence submitted by the Authority, including the customer’s complaint letter and internal memoranda summarizing the complaint, she ruled that hearsay evidence alone was insufficient to meet the burden of proof required to sustain charges. *In the Matter of Wilfred Blackwood (07-2742-0034).*

Off-Duty Criminal Conduct/Arrest:

1. Dismissal charges were sustained against a Transit Property Protection Agent convicted after pleading guilty to a “D” Felony for driving under the influence of drugs or alcohol, despite his spotless disciplinary record. *In the Matter of Oscar Boone.*

Penalties:

1. Penalty of dismissal against a Conductor who delayed service claiming that his train operator overran the station was deemed excessive when appearing to be based on past misconduct rather than the instant performance violation for which the employee was charged. *In the Matter of Jaime Worrell-Moore.*
2. Penalty of dismissal against a Conductor who assaulted a customer causing him to fall against the guard chains between two moving subway cars was deemed excessive based on the employee’s record. **Authority dissented.** *In the Matter of Ben Hart.*

Procedure:

1. The untimely scheduling of a step hearing in a disciplinary action does not constitute a fatal defect requiring that action to be dismissed. The arbitrator noted that the CBA provides for appeal to the next step as a cure. *Contract Interpretation Grievance - Untimely Step Hearings.*
2. Notification giving an employee the option of attending a Step I hearing on one of two dates satisfies Section 2.1(C)(16) of the CBA so that failure to appear on either date constitutes a "failure to appear on two occasions," but only if the Authority schedules the dates at least one week apart. This case also exemplifies a disciplinary procedural issue being certified by the discipline arbitrator to the Impartial Chairman to be decided as contract interpretation grievance. *Contract Interpretation Grievance - Setting Two Hearings In Same Notice.*
3. The Authority failed first part of two-pronged test for pre-disciplinary suspension when it suspended a Cleaner arrested for attempting an unauthorized transaction with a stolen credit card while on duty. The Arbitrator held that the infraction did not have sufficient nexus to the job to qualify as the kind for which pre-disciplinary suspension should be imposed. *In the Matter of Tracey Joseph.*
4. The Authority met the two-pronged test for pre-disciplinary suspension when it suspended a Bus Operator who grabbed a supervisor's chin while making an inappropriate comment and an ethnic slur. The Arbitrator held that attempting to physically intimidate a supervisor following a work instruction is the type of "serious" misconduct "detrimental to the operation of the Authority" for which pre-disciplinary suspension should be imposed. Statements submitted for arbitral review were sufficient to support a "reasonable basis to believe" that the employee "may be guilty" of the charge. *In the Matter of Osbourne Edwards.*

Sleeping on Duty:

1. The recommended penalty of dismissal for a Station Agent caught sleeping on duty was reduced to a ten-day suspension. The arbitrator acknowledged that the Authority was not bound by prior lax enforcement of the no sleeping rule and that such did not prevent it from treating sleeping as a major violation so long as all concerned were properly put on notice. The arbitrator also drew distinctions between sleeping and "nesting". *In the Matter of Donald Lipscomb.*

Theft/Fraud:

1. A Station Agent was dismissed on theft charges based solely on circumstantial evidence that she participated in fraudulent transactions involving manipulated MetroCards. Ability of the Authority's witnesses to credibly show the connection between independent pieces of circumstantial evidence was the determining factor. *In the Matter of Janice Walker.*

Time & Attendance:

1. A Train Operator with 23 years of service was dismissed after abandoning his job. Failure to submit medical certification for an extended illness and failure to report to the MAC after having been sent two notices at his address of record was sufficient basis for carrying him AWOL. After being AWOL for five consecutive days, employee was deemed to have abandoned his job under Section 2.11(a) of the CBA. Employee's contention that he had not received the notices was overcome by the arbitrator's application of the "mailbox" rule. *In the Matter of Matthew Rivero.*
2. Charges were sustained against a Conductor who failed to inform the crew office of his impending lateness at least one hour before the start of his tour. The arbitrator found his claimed inability to get through three minutes before the deadline insufficient to excuse his conduct in light of his knowledge of the cause of lateness well before that time. *In the Matter of Cavett Weaver.*
3. A Station Agent with multiple time and leave violations on record was dismissed for failing to submit a sick leave application and medical documentation for a short-term illness. The arbitrator took notice of a Stipulation and Agreement between the parties resolving several cases for a thirty (30) day suspension without pay on the condition that future time and leave violations, if proved, would result in a non-arbitrable penalty of dismissal. Finding against the Agent on the merits of the case, the arbitrator conceded a lack of jurisdiction to modify the penalty. *In the Matter of Keena Prens-Chalmers.*

Weingarten Rights:

1. Charges were sustained against a Specialty Chauffeur who refused to obey a supervisor's order then refused to write a G2 about the incident. The arbitrator made a distinction between an employee's right to Union representation under *Weingarten* during a pre-disciplinary interview as opposed to the existence of such rights when an employee is asked for a written statement regarding the incident. Nonetheless, he credited the Union's claim that PERB case law extended *Weingarten* rights beyond interviews to cover requests for statements and reduced the penalty of suspension upheld at the prior step from five to three days disallowing any discipline relating to the employee's refusal to write a statement. *In the Matter of James Hawkins-El.*