



## SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT INDEPENDENT OFFICE OF THE INSPECTOR GENERAL

# MORE TIME THEFT CASES – CAUSE FOR CONCERN

### INVESTIGATION RESULTS



Three BART employees who were not approved for remote work and whose work is not conducive to remote work were at their personal residences during much or portions of their paid duty hours. Dollar loss from time theft was \$9,004, but time-data patterns and other evidence support the likelihood of a higher loss. Not performing assigned tasks while on duty is a violation of District policy and knowingly seeking payment for time not worked violates the law. One of the three employees retired after being confronted by the BART Police Department (BPD), which we referred the matter to for assistance. The BPD presented their investigative findings to the San Mateo County District Attorney's Office, which filed charges against the employee on November 3, 2023. The other two employees admitted to their misconduct prior to involving the BPD. Those matters were referred to BART Executive Management.

The employees claimed to be working 10-hour shifts and would report to their duty locations for brief periods but would then leave for their private residence where they would remain for much or portions of their shifts. Despite the employees often not being at their work locations or performing their duties, they collected their base salary and extra earnings from shift pay, overtime, and double time (holiday overtime). They also received compensation in the form of paid pension benefits, vacation accruals, and other benefits.

### RELEVANT LAW & POLICY



Penal Code 532 (a)(1) states no person shall “*knowingly and designedly, by any false or fraudulent representation or pretense, defrauds any other person of money....*” The California False Claims Act provides liability against anyone who “[*k*]nowingly presents or causes to be presented” false claims to a public entity. District Operations Rules & Procedures, § 1303 states, “*Employees shall, while on duty, perform all tasks assigned or directed by proper authority,*” and § 1703 states, “*No employee shall knowingly enter, or cause to be entered, any inaccurate [or] false... information on District records.*”

### WHY THIS INVESTIGATION MATTERS



Time theft, or payroll fraud, adversely affects the District, public, and employees. It takes funding away from critical needs such as repairs and maintenance, which hinders the District's ability to provide safe, clean, reliable service to the public. Time theft is also harmful to other employees who perform their work and adhere to laws and policies in conducting their duties. It requires them to carry a larger workload and diminishes opportunities for regular pay increases.

Time theft is also damaging to BART's reputation, particularly, when evidence supports it was not an isolated event. Legislators and taxpayers are less likely to support public funding when they believe the District cannot be entrusted with their funds.

### RECOMMENDATIONS IN BRIEF

To hold the employees accountable for their misconduct, BART Management should:

- Seek restitution.
- Coordinate years-of-service adjustments with CalPERS.
- Address the employee misconduct.
- Improve timekeeping controls.

See page three for details.



### Cause for Concern

These are the third, fourth, and fifth time-theft allegations that we substantiated in the past two years. In four of the five instances, the patterns were the same: the BART employee would clock-in for their shift and then spend most or portions of their paid workdays absent from District worksites altogether. We released our first report on [February 3, 2023](#) and our second report on [September 8, 2023](#).<sup>1</sup>

These thefts indicate a lack of sufficient oversight by supervisors and managers who are responsible for approving time. It is imperative that the District has strong internal controls over time reporting to prevent time theft. Such controls should clearly indicate that time approval is not a perfunctory duty, but one that requires reasonable assurance that time is accurate before approving it.

Although the instances of substantiated time theft are cause for concern, we must note that we conducted a sixth investigation into an allegation of time theft that we did not substantiate.

---

## OIG REPORTING REQUIREMENT & DISCLOSURE PRACTICES

---

We are providing this report to comply with California Public Utilities Code 28841, which requires that we keep BART administration, the Board of Directors, and the public informed of our fraud, waste, or abuse investigative findings and recommendations.

The OIG provides the names of those involved in our investigations in only limited circumstances. This avoids violating privacy and confidentiality rights granted by law. The decision to provide names is made on a case-by-case basis and considers all elements of an investigation, including potential litigation. This practice does not prevent individuals from requesting documents under the California Public Records Act (CPRA). However, such disclosures may be restricted or limited by law.

---

<sup>1</sup> BART Employee Collected Pay & Benefits for Time Not Worked, February 2003; and Summary of Misconduct Investigations, September 8, 2023

**MANAGEMENT RESPONSE**

| Recommendations |                                |   |
|-----------------|--------------------------------|---|
| <b>1.</b>       | <b>Recommendation:</b>         | Seek civil restitution from the current employees for an amount to be determined by management.   |
|                 | <b>Implementation Date:</b>    | TBD   |
|                 | <b>Corrective Action Plan:</b> | It is management’s understanding that this case will not be referred for criminal charges. The Office of the General Counsel will advise management on options for seeking civil restitution for the District's losses.           |
| <b>2.</b>       | <b>Recommendation:</b>         | Work with the General Counsel’s Office to seek \$9,003.80 in restitution from former employee. Determine if the District should seek more if admitted to theft prior to the period covered in our investigation.                  |
|                 | <b>Implementation Date:</b>    | TBD   |
|                 | <b>Corrective Action Plan:</b> | If the former employee is not ordered to pay restitution as a result of the pending criminal charge, the Office of the General Counsel will advise management on options for seeking civil restitution for the District's losses. |
| <b>3.</b>       | <b>Recommendation:</b>         | Coordinate with CalPERS to make the appropriate years-of-service adjustments for the former employee’s retirement calculation, pending results of prosecution.  |
|                 | <b>Implementation Date:</b>    | TBD   |
|                 | <b>Corrective Action Plan:</b> | BART has made CalPERS aware of this case. Adjustment of the employee’s pension benefit is permitted only upon conviction or admitted guilt of specified crimes. Follow-up with CalPERS is dependent on outcome of the case.       |
| <b>4.</b>       | <b>Recommendation:</b>         | In accordance with the appropriate Collective Bargaining Agreement, address the employee violations of District Operations Rules and Procedures.  |

| Recommendations |                                |   |
|-----------------|--------------------------------|---|
|                 | <b>Implementation Date:</b>    | March 31, 2024  |
|                 | <b>Corrective Action Plan:</b> | Management is conducting investigations in accordance with the relevant Collective Bargaining Agreement. Decisions regarding discipline/employment status will be based on those investigations.  |
| 5.              | <b>Recommendation:</b>         | Implement procedures that require supervisors and managers to use processes that give them reasonable assurance that the time they are approving for employees is accurate.   |
|                 | <b>Implementation Date:</b>    | March 2024  |
|                 | <b>Corrective Action Plan:</b> | The Maintenance department will issue a Standard Operating Procedure (SOP) to “Align check-in/check-out process with the District’s expectations of accuracy, location validation, documentation and work schedule adherence.” The procedure will include beginning and end of shift check-ins and check-outs that must take place on District property, plus random crew site visits during shifts. Operations will conduct a follow-up to determine the effectiveness of the SOP. |

.....

**Providing Independent Oversight of the District's Use of Revenue**

.....

**Stop Fraud, Waste, & Abuse**  
**Report What You See**  
**to the OIG**



**24/7 Fraud, Waste, & Abuse Whistleblower Hotline**



**[www.bart.gov/oighotline](http://www.bart.gov/oighotline)**



**510-464-6100**

**OFFICE OF THE INSPECTOR GENERAL INVESTIGATIONS TEAM**

Claudette Biemeret, Inspector General

P: 510.464.6141 E: [cbiemer@bart.gov](mailto:cbiemer@bart.gov)

Zurvohn Maloof, Deputy Inspector General

P: 510.464-6132 E: [zurvohn.maloof@bart.gov](mailto:zurvohn.maloof@bart.gov)

Jeffrey Dubsick, Principal Investigative Auditor

P: 510.817.5937 E: [jeffrey.dubsick@bart.gov](mailto:jeffrey.dubsick@bart.gov)

Jorge Oseguera, Principal Investigative Auditor

P: 510.464.6569, E: [jorge.oseguera@bart.gov](mailto:jorge.oseguera@bart.gov)

**OFFICE OF THE INSPECTOR GENERAL**

2150 Webster Street, 4<sup>th</sup> Floor, Oakland, CA 94612

P:510.464.6141

E: [inspectorgeneral@bart.gov](mailto:inspectorgeneral@bart.gov)

W: [bart.gov/oig](http://bart.gov/oig)

T: [@oigsfbart](https://twitter.com/oigsfbart)

**REPORTS**

You can read this and all of the Office of the Inspector General's reports on our website at [www.bart.gov/oig](http://www.bart.gov/oig).