

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Hon. Cathy L. Waldor
	:	
v.	:	Mag. No. 16-7093
	:	
DONALD HARPER	:	
	:	CRIMINAL COMPLAINT


I, Wendi C. Grant, being duly sworn, state the following is true and correct to the best of my knowledge and belief:

SEE ATTACHMENT A

I further state that I am a Special Agent with Amtrak, Office of Inspector General, Office of Investigations ("Amtrak OIG"), and that this complaint is based on the following facts:

SEE ATTACHMENT B

continued on the attached page and made a part hereof.



Wendi C. Grant, Special Agent
Amtrak OIG

Sworn to before me and subscribed in my presence,
July 18, 2016 at Newark, New Jersey

HONORABLE CATHY L. WALDOR
UNITED STATES MAGISTRATE JUDGE



Signature of Judicial Officer

ATTACHMENT A

Count One

(Fraud on Agency Receiving Federal Funds)

From at least in or about October 2014 to in or about October 2015, in Union and Somerset Counties, in the District of New Jersey and elsewhere, defendant

DONALD HARPER,

being an agent of an organization, embezzled, stole, obtained by fraud and otherwise without authority converted to the use of any person other than the rightful owner and intentionally misapplied, money and property valued at \$5,000 and more that was owned by, and was under the care, custody, and control of such organization, namely, the National Railroad Passenger Corporation ("Amtrak"), which received in excess of \$10,000 in federal funds within the relevant one-year periods.

In violation of Title 18, United States Code, Section 666(a)(1)(A) and Section 2.

Count Two

(Theft of Government Property)

From at least in or about October 2014 to in or about October 2015, in Union and Somerset Counties, in the District of New Jersey and elsewhere, defendant

DONALD HARPER

did knowingly embezzle, steal, purloin, and convert to his own use, monies and things of value of the United States and any department and agency thereof, the value of which exceeded \$1,000, specifically, regular and overtime pay and associated benefits for hours that defendant DONALD HARPER did not actually work.

In violation of Title 18, United States Code, Section 641 and Section 2.

ATTACHMENT B

I, Wendi C. Grant, am a Special Agent with Amtrak OIG. I have personally participated in this investigation and am aware of the facts contained herein, based upon my own investigation of the conduct of defendant DONALD HARPER, which included video surveillance, analysis of cellular phone records and monitoring of a GPS tracking device installed on defendant HARPER's Amtrak-issued vehicle, as well as information provided to me by other law enforcement officers. Because this Attachment A is submitted for the limited purpose of establishing probable cause, I have not included herein the details of every aspect of the investigation. Where the content of documents and the actions, statements, and conversations of individuals are recounted herein, they are recounted in substance and in part, except where otherwise indicated.

1. At all times relevant to this Complaint:

- a. Defendant DONALD HARPER (hereinafter "defendant HARPER") was employed by Amtrak as a supervisor working on the Signals side of the Communications and Signals Department ("C&S"), New York Division. In particular, defendant HARPER was stationed at the Elmora Headquarters in Elizabeth, New Jersey. Defendant HARPER was responsible for the supervision of work gangs Q062/Q112A, consisting of approximately 19 employees. Work gang Q062/Q112A employees consisted of signal maintainers, electronic technicians, test maintainers, helpers and trainees. HARPER and his work gangs serviced the signal equipment on and alongside the railroad tracks. Harper's supervisory territory ran from Northeast Corridor Railroad Milepost 9.6, in Newark, New Jersey to Milepost 29.0, at the Edison Train Station, in Edison, New Jersey. In addition to the Elmora Headquarters, there are three other headquarters in Harper's territory: Lincoln Tower in Metuchen, New Jersey; Union Tower in Rahway, New Jersey and Hunter Yard near Newark, New Jersey. The 19 members of the Q062/Q112A reported to the various 4 headquarters locations, each location being responsible for a section of track. During the summer of 2015, Harper and his work gang worked overtime on the Congressionally-mandated Positive Train Control installation. Gang Q062's working hours collectively covered a 24 hours a day, seven days a week operation. Defendant HARPER has been employed by Amtrak since in or about February 15, 1990.
- b. Amtrak is a private, for-profit corporation, which was created by the United States Congress in 1970, by the passage of the Rail Passenger Service Act. Notwithstanding its structure as a private corporation, the United States Supreme Court has recognized that Amtrak was "created by the [federal] Government, is controlled by the Government, and operates for the Government's benefit." *Dept. of Trans. v. Assoc. of Am. Railroads*, 135 S.Ct. 1225, 1232 (2015).
- c. Amtrak's ownership and corporate structure are heavily controlled by the federal government:

- i. All of Amtrak's preferred stock and most of its common stock are owned by the federal government, specifically, the United States Department of Transportation.
 - ii. Amtrak's nine-member Board of Directors was composed of: a) the Secretary of the United States Department of Transportation; b) seven other board members appointed by the President of the United States and confirmed by the United States Senate; and c) a Board President selected by the other eight members of the Board.
 - iii. Amtrak's Board members are subject to salary limits set by Congress, and the appointed Board members are removable by the President of the United States without cause.
- d. The branches of the federal government exercise substantial supervision over Amtrak's operations:
- i. Amtrak is required to submit annual reports to Congress and the President of the United States detailing such information as route-specific ridership and on-time performance.
 - ii. Congress conducts frequent oversight hearings to delve into details of Amtrak's budget, routes and prices.
 - iii. The Freedom of Information Act applies to Amtrak.
 - iv. Amtrak is a "designated federal entity" under the Inspector General Act of 1978, and must maintain an inspector general.
 - v. Amtrak is statutorily required to, in addition to advancing its economic interests, pursue numerous public objectives, such as providing reduced fares to the disabled and elderly, ensuring mobility in times of national disaster, and maintaining certain specific routes.
- e. Amtrak was substantially supported by federal funds, well in excess of \$10,000 each year for the period covering January 1, 2014 through December 31, 2015. In recent years, including 2014 and 2015, Amtrak has received over \$1 billion annually in federal appropriations.

2. Defendant HARPER's compensation for the years 2014 and 2015 is summarized below:

SUMMARY OF DEFENDANT HARPER'S COMPENSATION		
	2014	2015
Regular Wages	\$64,882.18	\$63,729.62
Overtime	\$96,094.17	\$110,344.64

Other Compensation	\$24,173.35	\$31,138.92
Gross Pay	\$185,149.70	\$205,213.18

3. From at least on or about October 4, 2014 to in or about October 31, 2015, defendant HARPER routinely reported working regular and overtime hours to Amtrak in New Jersey when he was not actually physically present at Amtrak sites, and thus was not supervising any members of his gang. As a result of this fraudulent overbilling, Amtrak has sustained estimated cumulative losses of approximately \$20,346.26, based on approximately 220 hours fraudulently billed for regular ("reg.") and overtime ("OT") hours when defendant HARPER was not actually present at the required work location, as well as associated overhead charges.
4. Overhead charges represent the indirect support expenses incurred by Amtrak related to specific geographic regions and departments that are involved in a particular project, including, among other items, human resources costs and employee health benefits. "Overhead Overcharged" as referenced herein represents the specific amounts of overhead costs incurred by Amtrak allocable to hours that defendant HARPER fraudulently billed, but was not working.
5. For certain days, defendant HARPER was never present at an Amtrak location for the entire day, and thus did not work the overtime hours for which he billed on those days. For example, on the following days, defendant HARPER claimed to be working overtime hours, but was not present on Amtrak property at all and instead was present at his residence in Franklin Township, New Jersey ("Harper's Residence"), or another residence in Elizabeth, New Jersey ("Residence 2").

DATE	OT HOURS BILLED BUT NOT PRESENT	DEFENDANT HARPER'S LOCATION
6/20/15	8	Harper's Residence/Residence 2
6/21/15	7	Residence 2
8/12/15	4	Harper's Residence/Residence 2
8/19/15	4	Harper's Residence/Residence 2
8/22/15	12	Harper's Residence
8/23/15	7	Harper's Residence/Residence 2
9/2/15	4	Harper's Residence/Residence 2
9/27/15	8	Harper's Residence
10/4/15	7	Harper's Residence/Residence 2
10/11/15	7	Harper's Residence
TOTAL	68	

6. For other days, defendant HARPER arrived hours late for his scheduled shift and departed early, spending the majority of the time that he certified working, but was not present, at either Harper's Residence or Residence 2.
7. The following chart sets forth a summary of defendant HARPER's fraudulent billing of Amtrak and is based on a review of certain evidence, which included the review of

defendant HARPER's cellular phone records, Amtrak billing and time-keeping records, as well as monitoring data from a GPS tracker placed upon defendant HARPER's Amtrak-issued vehicle.

DATE	SHIFT CLAIMED	HOURS BILLED BUT NOT PRESENT	REG. HOURS OVERBILLED	OT HOURS OVERBILLED	COST OF REG HOURS OVERBILLED	COST OF OT OVERBILLED	OVERHEAD OVERCHARGED
10/4/14	6am-6pm	2:30pm-6pm		3.5		\$213.41	\$209.67
10/11/14	6am-6pm	1:30pm-6pm		4.5		\$274.38	\$269.58
10/25/14	6am-6pm	3pm-6pm		3		\$182.92	\$179.72
10/26/14	6am-6pm	8am-10:30am, 4pm-6pm		4.5		\$274.38	\$269.58
11/1/14	7am-7pm	8:45am-9:30am, 2:15-7pm		5.5		\$335.36	\$292.93
11/2/14	7am-7pm	8:30am-10:30am, 5:30-7pm		3.5		\$213.41	\$186.41
1/11/15	7pm-7am	7pm-1am		6		\$371.34	\$324.33
1/26/15	3am-3pm	3am-4:15am		1.25		\$77.36	\$67.56
1/31/15	12am-7am, 7pm-12am	5:30am-7am		1.5		\$92.83	\$81.08
2/22/15	7am-7pm	4:15pm-5:30pm		1.25		\$77.36	\$67.56
3/15/15	7am-7pm	3:30pm-7pm		3.5		\$216.61	\$189.19
4/14/15	3am-3pm	3am-5:30am		2.5		\$154.72	\$135.13
4/22/15	11pm-12am	11pm-12am		1		\$61.89	\$54.05
6/20/15	11pm-7am	Entire shift		8		\$495.12	
6/21/15	12am-7am	Entire shift		7		\$433.23	
8/12/15	* ¹	Entire shift		4		\$247.56	\$292.14
8/19/15	*	Entire shift		4		\$247.56	\$265.16
8/22/15	7pm-7am	Entire shift		12		\$742.68	\$795.48
8/23/15	*	Entire shift		7		\$433.23	\$464.03
9/2/15	3am-3pm	3am-7am		4		\$247.56	\$265.16
9/15/15	3am-3pm	5:30am-6:30am		1		\$61.89	\$66.29
9/16/15	3am-3pm	3am-6:45am, 1pm-3pm	2	2.75	82.52	\$170.19	\$182.29
9/17/15	3am-3pm	3am-6:30am, 2pm-3pm	1	3.5	41.26	\$216.61	\$232.01
9/18/15	3am-3pm	3am-7am, 1:45pm-3pm	1.25	4	51.57	\$247.56	\$265.16
9/23/15	3am-3pm	3am-7am, 1:15pm-3pm	1.75	4	72.20	\$247.56	\$265.16
9/24/15	3am-3pm	3am-6:30am, 1:30pm-3pm	1.5	3.5	61.89	\$216.61	\$232.01

¹ An "*" in the "Shift Claimed" column indicates that the specific hours that Harper claimed to be working are not designated in Amtrak's internal records or time keeping system, however based on the presence of his Amtrak-issued vehicle at either Harper's Residence or Residence 2 for the entirety of those days, it is likely that defendant HARPER did not work any shift at Amtrak on those days.

DATE	SHIFT CLAIMED	HOURS BILLED BUT NOT PRESENT	REG. HOURS OVERBILLED	OT HOURS OVERBILLED	COST OF REG HOURS OVERBILLED	COST OF OT OVERBILLED	OVERHEAD OVERCHARGED
9/26/15	7am-3pm	7am-12:15pm		5.25		\$324.92	\$348.02
9/27/15	7am-3pm	Entire shift		8		\$495.12	\$530.32
9/28/15	7am-3pm	7am-8:30am, 10:45am-3pm	5.75		237.24		
9/29/15	3am-3pm	3am-5:30am, 2:15pm-3pm	.75	2.5	30.94	\$154.72	
9/30/15	3am-3pm	3am-7am		4		\$247.56	\$265.16
10/1/15	3am-3pm	3am-6am, 11:30am-3pm	3.5	3	144.41	\$185.67	
10/2/15	3am-12pm	3am-6:15am		3.25		\$201.14	
10/3/15	12am-7am, 7pm-12am	3:30am-7am, 7pm-12am		8.5		\$526.06	
10/4/15	12am-7am	Entire shift		7		\$433.23	
10/11/15		Entire shift		7		\$433.23	
10/13/15	3am-3pm	2pm-3pm		1		\$61.89	
10/14/15	3am-3pm	12:30pm-3pm		2.5		\$154.72	
10/17/15	12am-7am	3:45am-7am		3.25		\$201.14	
10/18/15	6am-6pm	6am-10:30am, 4:45pm-6pm		5.75		\$355.86	
10/19/15	7am-3pm	1:45pm-3pm	1.25		51.57		
10/23/15	7am-3pm	1pm-3pm	2		82.52		
10/24/15	6am-6pm	6am-8am, 2:45pm-6pm		5.25		\$324.92	
10/25/15	6am-6pm	6am-7:15am, 8:30am-6pm		10.75		\$665.31	
10/26/15	7am-3pm	11:15am-3pm	3.75		\$154.72		
10/28/15	5am-5pm	12:30pm-2:30pm, 4pm-5pm	2	1	82.52	\$61.89	
10/30/15	7am-12pm, 10pm-12am	10:45am-12pm	1.25		51.57		
10/31/15	12am-7am, 7pm-12am	4am-7am, 7pm-12am		8		\$495.12	\$530.32
			27.75	192.25	\$1,144.93	\$11,875.83	\$7,325.50
TOTAL					\$20,346.26		