



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

**Analysis of Disclosures, Agency Investigation and Reports,
and Whistleblower Comments**

OSC File No. DI-11-1353
(Evan Seeley, Ronkonkoma, New York)

Background

The disclosures in this matter were made by Mr. Evan Seeley, an Air Traffic Control Specialist (controller) at the Department of Transportation (DOT), Federal Aviation Administration (FAA), New York Air Route Traffic Control Center (ZNY), Ronkonkoma, New York. Mr. Seeley alleged that FAA employees were engaging in conduct that constitutes a violation of law, rule, or regulation and gross mismanagement, and has contributed to a substantial and specific danger to public safety.

Mr. Seeley, who was assigned as a Frontline Manager (FLM) at ZNY from February 2010 to January 2011, made several allegations concerning the management and operation of ZNY, one of the busiest and most complex air traffic control facilities in the nation. Specifically, he alleged that: 1) controllers routinely engaged in conduct that violated FAA orders and policies, such as: non-compliance with air traffic procedures, sleeping and using prohibited electronic devices in the control room, improper work stoppages, and leaving their shifts early; and 2) ZNY management was aware of these violations and performance deficiencies, but failed to address and often condoned the controllers' conduct. He contended that the controllers' actions, and management's indifference to and/or tolerance of these actions, compromised air traffic safety.

On March 7, 2011, the Office of Special Counsel (OSC) referred Mr. Seeley's allegations to the Honorable Ray LaHood, Secretary of Transportation, to conduct an investigation pursuant to 5 U.S.C. § 1213(c) and (d). Secretary LaHood delegated responsibility for investigating the matter to FAA's Office of Audit and Evaluation (AAE). OSC received the agency's report on September 12, 2011, and supplemental reports on November 8, 2011, and March 26, 2012. On December 28, 2011, and March 6, 2012, Mr. Seeley provided comments on the reports pursuant to 5 U.S.C. § 1213(e)(1).

Summary

The investigation substantiated most of Mr. Seeley's allegations, including the allegations of controllers' non-compliance with air traffic procedures, sleeping and using prohibited electronic devices in the control room, improper work stoppages, and leaving their shifts early. The investigation also confirmed Mr. Seeley's allegation that ZNY managers were aware of, but failed to correct, the violations and performance deficiencies. The initial and supplemental reports outline several corrective actions taken by DOT, including the establishment of an

Interim Leadership Team at ZNY and disciplinary action against three ZNY managers found responsible for wrongdoing. The allegations, findings, and whistleblower's comments are discussed below.

Air Traffic Communication and Procedures

Mr. Seeley alleged that air traffic controllers at ZNY failed to comply with FAA Order 7110.65, which prescribes air traffic control procedures and provides clear instructions on the required and acceptable formats, terms, and phraseology to be used by controllers. He alleged that controllers maintained a careless and casual attitude toward radio and interphone communication, which often resulted in miscommunication and confusion. Mr. Seeley further alleged that controllers failed to adhere to procedures set forth in Order 7110.65 for air space coordination with other controllers and facilities, such as the New York Terminal Radar Approach Control. He frequently observed controllers turn aircraft, without coordination, while the aircraft were still within the confines of other controllers' airspace. He provided an example of how non-conforming communication and failure to follow coordination procedures were demonstrated during a January 20, 2011, incident involving a near mid-air collision in ZNY airspace.

Mr. Seeley further alleged that other than disseminating occasional Significant Meteorological Information (SIGMET) and Airmen's Meteorological Information (AIRMET) advisories, controllers rarely issue weather (WX) advisories to aircraft, as required by Order 7110.65. He explained that when asked to issue WX advisories, controllers often demanded additional spacing between aircraft, referred to as miles-in-trail, which was typically unnecessary and resulted in significant air traffic delays. When these requests were denied by management, controllers would not issue the WX advisories. He asserted that aircraft routinely fly through moderate to extreme precipitation without being advised of these conditions. He contended that ZNY managers were aware of these procedural violations and performance deficiencies, but failed to address them. He raised the issue of noncompliance with Order 7110.65 during staff meetings, but he did not observe any improvement.

The investigation substantiated Mr. Seeley's allegations. AAE found that controllers used non-standard phraseology in 48% of the sessions monitored by investigators, and that non-compliance with required procedures occurred in 40% of those monitored sessions. Based on these observations and the review of the documented operational errors (OEs) and operational deviations (ODs) that occurred at ZNY between October 2010 and May 2011, AAE confirmed that controllers frequently deviate from FAA procedures, and that the performance of nearly 50% of the controllers was non-compliant with FAA standards.

Regarding WX advisories, AAE observed several instances in which weather or areas of precipitation were depicted on controllers' displays, but the required advisories were not issued to aircraft flying through the depicted weather. AAE also observed instances where controllers received pilot weather reports regarding turbulence, but did not relay this information to other pilots flying through those areas, as required. The investigation further confirmed that ZNY managers were aware of controllers' failure to issue weather information. The report notes that

while this allegation was substantiated, the evidence that the non-compliance was pervasive at ZNY was inconclusive. Further, AAE did not find evidence of improper air traffic slow-downs.

Despite the level of controller non-compliance with FAA procedures, the investigation revealed a lack of documentation concerning performance deficiencies. AAE found that managers were reluctant to officially document any negative performance issues. FLMs stated that if they managed ZNY controllers as managers routinely do in other FAA facilities, they would face retaliation by the union at ZNY, National Air Traffic Controllers Association (NATCA), and a lack of support from facility management. The report notes that a few FLMs indicated that ZNY is a "hostile environment" for FLMs. The report states, "Considering the number of performance deficiencies pertaining to phraseology, procedures and severe weather information witnessed by the AAE investigative team, the pervasive lack of documentation is consistent with the allegation that ZNY management has been clearly aware of performance deficiencies at ZNY, has failed to address them, and often condones non-compliant controller performance." AAE found that management actively discouraged the documentation of controller performance issues.

In addition, the investigation revealed numerous instances in which ZNY personnel engaged in various forms of misconduct in violation of FAA orders and policies, including incidents of insubordination, inappropriate, abusive, and obscene language, and threatening messages directed toward Mr. Seeley and other FLMs. AAE found that "the major causal factor contributing to the widespread conduct issues at ZNY was management's reluctance and/or failure to address misconduct through the use of approved disciplinary procedures under FAA personnel rules."

Improper Use of Electronic Devices and Sleeping in Control Room

Mr. Seeley alleged that despite FAA's policy prohibiting the use of electronic devices in the control room, controllers openly used personal electronic devices such as cell phones and laptop computers to view pictures, text friends, play video games and watch movies, while on position. He stated that wireless internet routers were placed throughout the operations area to accommodate the use of the laptops. He asserted that management permitted laptop usage only during the midnight shifts, when air traffic is lighter, but there were often a dozen laptops in use during those shifts. Mr. Seeley also alleged that sleeping on the midnight shifts was so common that controllers kept inflatable mattresses at the facility. While the controllers he observed sleeping were on break, FAA policy prohibits sleeping during assigned shift hours anywhere in the facility, much less on the control room floor.

The investigation substantiated the allegations that controllers used electronic devices while on position and slept on mattresses or mats in the control room during the midnight shifts, in violation of FAA policies. The report states that AAE did not find evidence of current use of electronic devices or sleeping in the control room during the investigation. However, the evidence gathered through interviews established that controllers did engage in these activities, with ZNY management's knowledge, during the time that Mr. Seeley was assigned to ZNY. Regarding the use of electronic devices, the report states, "Overwhelmingly, the findings of this investigation confirmed that it was common knowledge that ZNY was not in compliance until

[February 2011]," when Mr. Seeley's allegations were widely publicized in the New York-area and national media. AAE found that, with the exception of one instance of proposed disciplinary action initiated after Mr. Seeley reported a controller, there was no evidence that ZNY management took any corrective action to curb the activities prior to the media reports in February 2011.

Similarly, AAE found that senior ZNY management was aware that controllers were sleeping on inflatable mattresses or mats in the control room, but found no evidence that management took any action to return ZNY to compliance while Mr. Seeley was assigned to ZNY. Rather, AAE found that, as with the use of electronic devices, this practice was abruptly terminated in February 2011, when Mr. Seeley's allegations were publicized. The report also attributes compliance to the widely reported incidents of controllers sleeping while on duty at various FAA facilities around the country. The investigation did not find, however, that wireless internet routers were installed in the operations area. Rather, AAE determined that two routers were located in the NATCA office at ZNY, outside of the operations area, pursuant to an agreement with FAA. AAE determined that the existence of a wireless signal not connected to the FAA network does not pose a known safety hazard since the prohibition of electronic devices in the control room is now enforced.

Inadequate Controller Training and Improper Work Stoppages

According to Mr. Seeley, the on-the-job training (OJT) provided to new controllers, known as developmentals, and the management of OJT were grossly inadequate at ZNY. He contended that the cavalier attitude of the controllers concerning FAA rules and policies was instilled in the developmentals through the training process. He further alleged that controllers regularly engaged in improper work stoppages, known as job actions, by refusing to provide OJT to developmentals. He asserted that these actions were carried out to ensure longer breaks and increased overtime. He described one incident in which a controller refused to train a developmental, and subsequently admitted to the job action, stating that the purpose was to facilitate longer breaks. Rather than discipline the controller, managers advised Mr. Seeley that he needed to adjust to the ZNY culture and dismissed the matter.

The investigation substantiated Mr. Seeley's allegations concerning inadequate OJT at ZNY. Based on a review of a random sample of 100 OJT Instruction/Evaluation Reports, AAE found that 32% of the reports were not in compliance with FAA regulations in that they lacked identification of performance deficiencies. Investigators also observed two training sessions, during which developmentals exhibited various performance deficiencies that were not subsequently documented. The investigation also confirmed Mr. Seeley's allegation of improper work stoppages. AAE determined that FLMs found it challenging to manage the daily OJT requirements, because controllers regularly refused OJT assignments by FLMs, and Operations Managers (OMs) would not exert managerial authority over the controllers. AAE determined that the controllers' refusal to perform OJT instruction was an improper work stoppage.

Time-and-Attendance Violations and Leave and Overtime Manipulation

Mr. Seeley alleged that controllers regularly arrived for the day shift at 7:00 a.m. and reported for the midnight shift that same day at 10:30 p.m., in violation of the eight-hour rest time requirement between shifts. He also alleged that controllers did not sign into CRU-ART, the electronic time-and-attendance system, as required when they "flexed" into their shifts, *i.e.*, arrived at a time other than their scheduled start time. Mr. Seeley also observed that controllers were leaving the facility prior to the end of their shifts, in some cases an hour or more early. When Mr. Seeley suggested that management conduct random audits, he was told by management that audits would be seen as too aggressive and no action was taken to address the problem.

In addition, Mr. Seeley disclosed that controllers engaged in improper leave manipulation in what he contended was an effort to increase overtime. He also stated that during November and December 2010, he met with an OM several times to report that an FLM was abusing sick leave in violation of regulations and FAA policy by only working shifts when he would receive a pay differential, double pay, or overtime. He contended that this resulted in unnecessary scheduling changes and overtime assignments for the remaining FLMs. The OM dismissed Mr. Seeley's concerns, stating that the FLM deserved to use his sick leave because he was retiring. She further advised him that "things are done differently" at ZNY and instructed him to drop the issue. The FLM retired prior to the investigation.

Through interviews and a random review of time-and-attendance records, AAE did not find evidence that controllers violated the eight-hour rest requirement, made false claims to have arrived before their sign-in times, or were not in compliance with sign-in requirements for CRU-ART. However, the investigation did substantiate Mr. Seeley's allegation that controllers were leaving their shifts early. AAE found that it was common practice for controllers to leave the facility 15 minutes prior to the end of their shifts, and that ZNY management was aware of this practice. The investigation further revealed that ZNY Area B had negotiated staffing numbers and an automatic overtime requirement with NATCA which were not common knowledge among the OMs or consistent with agency guidelines.

Further, the investigation substantiated Mr. Seeley's allegation concerning the FLM abusing sick leave. AAE found that the FLM was "gaming the system" for personal gain by using his position as the Area B scheduler to create a schedule more personally and financially favorable to himself. AAE further found that the Area B OM improperly approved the FLM's schedule, leave, and overtime. AAE did not find, however, that the FLM's actions resulted in unnecessary scheduling changes or overtime assignments for the remaining FLMs.

Corrective Action

In response to the findings, the agency has taken significant corrective actions to address the problems identified at ZNY. In September 2011, FAA established and imbedded an Interim Leadership Team (ILT) at ZNY, bringing in experienced personnel from other FAA facilities to serve in a variety of capacities. The ILT was tasked with addressing all substantiated non-compliance and deleterious behavior impacting the safety and performance of the operations, and

charged with implementing all corrective actions necessary to bring ZNY into compliance with FAA rules, regulations, orders, and policies.

As outlined in the second supplemental report, the ILT identified the necessary personnel and organizational changes at ZNY, many of which have been completed. In addition, the ILT has developed and implemented several strategies to address the various issues identified during the investigation. These include, but are not limited to: 1) rebuilding the controller training program; 2) implementing a workforce training strategy for managers and staff that incorporates best practices from other facilities; 3) establishing a performance management program that includes customized training to address ZNY's specific needs, electronic performance management and quality tracking programs, and training for FLMs; 4) establishing effective resource management practices and procedures to address issues such as scheduling, time-and-attendance, the selection process for certain positions, a system for disseminating policy bulletins, and procedures for receiving and tracking hostile work environment complaints; 5) establishing rapport with the workforce through regular meetings with management and staff; 6) efforts to foster a collaborative relationship with NATCA; and 7) establishing a ZNY safety committee.

Regarding disciplinary action, the supplemental reports indicate that FAA conducted a supplemental investigation into the potential misconduct by the five ZNY managers in order to determine appropriate disciplinary action. According to the second supplemental report, FAA issued a letter of proposed dismissal from federal service to David LeCates, ZNY Air Traffic Manager (ATM). Lois Esposito, ZNY Staff Manager, and Lori Weber, Area B Operations Manager, both received letters of proposed demotion and permanent removal from the management ranks. Sam Shelton, Support Manager for Quality Assurance, and Peter Sheppard, Area D Operations Manager, were cleared of any wrongdoing and returned to their positions.

The second supplemental report further indicates that the new ATM will be in place in April 2012. The other members of the ILT will remain in place for varying lengths of time to assist with the transition of the new ATM. It is further noted that some of the previous ZNY management team were found to be effective leaders and they have embraced the new training and procedural initiatives. Thus, they will take on permanent management roles.

The Whistleblower's Comments

Pursuant to 5 U.S.C. § 1213(e)(1), Mr. Seeley provided comments on the initial and supplemental reports. He noted that while the report substantiated the allegations of misconduct by ZNY management, he was disappointed with FAA's unwillingness to acknowledge or address NATCA's role in the dysfunctional management of ZNY. In particular, he noted that the investigation substantiated his allegation that controllers engaged in improper work stoppages with regard to OJT; however, the agency failed to take any action against NATCA for encouraging this behavior.

Further, Mr. Seeley commented on the finding that controllers failed to issue WX advisories, but that the evidence was not conclusive that such behavior was pervasive. He asserted that the explanations given by ZNY managers regarding why the requirements of

Order 7110.65 did not apply to ZNY are “at the heart of why there is such a large problem at ZNY.” He also noted that while the investigation found that controllers were consistently disseminating AIRMET and SIGMET advisories, simply issuing these notices does not adequately advise pilots of convective activity.

In addition, Mr. Seeley contended that when the investigation confirmed that controllers violated FAA’s policy prohibiting the use of electronic devices in the control room, the agency should have immediately removed all wireless routers, regardless of where they were located in the facility. He maintained that the presence of the routers is compromising public safety.

Regarding the issue of controllers violating the eight-hour rest requirement, Mr. Seeley believes that ZNY management and NATCA focused on minimizing this violation after he left ZNY and before the investigative team arrived. He argued that had the team conducted a more thorough investigation prior to February 2011, this allegation would have been substantiated.

With respect to the allegation of time-and-attendance violations, Mr. Seeley commented that the random sampling taken may not have been sufficient and contended that the evidence confirming that controllers were leaving their shifts early constitutes evidence of time-and-attendance fraud.

Mr. Seeley provided brief comments in response to the second supplemental report on the status of the corrective and disciplinary actions taken at ZNY. He commended AAE for conducting a thorough investigation and taking appropriate corrective action. He stated that he is satisfied with the report and the actions taken.

The Special Counsel's Comments

I have reviewed the original disclosures, the agency's reports, and the whistleblower’s comments. Based on that review, I have determined that the agency's reports contain all of the information required by statute and that the findings appear to be reasonable. I do, however, recommend that AAE conduct periodic, unannounced inspections at ZNY to ensure that the corrective actions that have been implemented remain in place.