

Issue: Compliance - Grievance Procedure (30 Day Rule); Ruling Date: June 13, 2018; Ruling No. 2018-4741; Agency: Virginia Department of Transportation; Outcome: Grievant Not in Compliance.



**COMMONWEALTH of VIRGINIA**  
**Department of Human Resource Management**  
**Office of Equal Employment and Dispute Resolution**

**COMPLIANCE RULING**

In the matter of the Virginia Department of Transportation  
Ruling Number 2018-4741  
June 13, 2018

The Virginia Department of Transportation (the “agency”) seeks a compliance ruling from the Office of Equal Employment and Dispute Resolution (EEDR) concerning the grievant’s filing of a dismissal grievance on June 1, 2018. The agency asserts that two actions challenged by the grievance were not initiated within the 30 calendar day time period required by the grievance procedure.

The grievance procedure provides that an employee must initiate a written grievance within thirty calendar days of the date she knew or should have known of the event or action that is the basis of the grievance.<sup>1</sup> When an employee initiates a grievance beyond the thirty calendar-day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed. In this case, the event that forms the basis of the grievance is the grievant’s termination by Written Notice dated May 4, 2018. The agency agrees that the dismissal grievance is timely initiated to challenge this action. However, the grievance also addresses two additional disciplinary actions, a Written Notice dated November 17, 2017, and a Written Notice dated April 13, 2018.

*April 13, 2018 Written Notice*

A grievance to challenge the April 13, 2018 Written Notice should have been initiated within 30 days of that date, i.e., no later than May 13, 2018. It does not appear that the agency ever received such a grievance; and the date upon which EEDR received the dismissal grievance indicates that it was not initiated until June 1, 2018. Because the grievant initiated her grievance more than 30 calendar days beyond the date on which she was terminated, the grievance is untimely to challenge the April 13, 2018 Written Notice. Thus, the only remaining issue is whether there was just cause for the delay.

The grievant argues that because she was terminated on May 4, 2018, she only had 22 days in which to challenge the April 13, 2018 Written Notice. However, the grievant may have initiated a separate grievance to challenge this Written Notice even after her termination, as she did regarding the May 4, 2018 Written Notice. EEDR has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.<sup>2</sup> A grievant’s

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<sup>1</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

<sup>2</sup> See, e.g., EDR Ruling Nos. 2006-1349, 2006-1350; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

lack of knowledge about the grievance procedure and its requirements does not constitute just cause for failure to act in a timely manner. Thus, EEDR concludes that the grievant has failed to demonstrate just cause for her delay in initiating a grievance that challenges the April 13, 2018 Written Notice.

*November 17, 2017 Written Notice*

With respect to the November 17, 2017 Written Notice, the agency indicates that this matter was grieved on December 18, 2017, and has now been concluded; thus, any subsequent challenge to the Written Notice would be duplicative. The grievant argues that she was previously presented with “inaccurate and modified evidence,” as to the alleged misconduct and argues that it is now relevant as the agency cited to the earlier Written Notice during the termination process. However, the *Grievance Procedure Manual* states that a grievance may not “challeng[e] the same management action or omission challenged by another grievance.”<sup>3</sup> In this instance, because the November 17, 2017 Written Notice has already been grieved, it may not now be re-litigated at the hearing regarding the grievant’s termination.

Accordingly, the June 1, 2018 grievance may proceed to hearing as described above. A hearing officer will be appointed in a forthcoming letter. To the extent that either party may wish to raise the issue of prior Written Notices as background information, if deemed relevant by the hearing officer to any other claims that proceed in this grievance, each may do so.

EEDR’s rulings on matters of compliance are final and nonappealable.<sup>4</sup>



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Office of Equal Employment and Dispute Resolution

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<sup>3</sup> *Grievance Procedure Manual* § 2.4.

<sup>4</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).