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COMPLIANCE RULING

In the matter of the Virginia Department of Transportation
Ruling Number 2021-5189
December 31, 2020

The Virginia Department of Transportation (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management in relation to the grievant’s December 15, 2020 dismissal grievance.

FACTS

The grievant, through counsel, submitted a dismissal grievance to EDR by email on December 15, 2020. The dismissal grievance purports to challenge two disciplinary actions: (1) a Group II Written Notice issued on March 23, 2020, and (2) a second Group II Written Notice with termination issued on November 17, 2020. In response to EDR’s notification of receipt of the grievance, the agency has requested a compliance ruling on whether the dismissal grievance is timely to challenge the March 23 Written Notice.¹

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he knew or should have known of the event or action that is the basis of the grievance.² When an employee initiates a grievance beyond the 30-calendar-day period without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed. EDR has long held that in a grievance challenging a disciplinary action, the 30-calendar-day timeframe begins on the date that management presents or delivers the Written Notice to the employee.³ Further, the *Grievance Procedure Manual* states that “[a]n employee who wishes to appeal a disciplinary action must file a grievance within 30 calendar days of *receipt* of the Written Notice.”⁴

¹ The agency does not dispute that the grievance is timely as to the November 17 Written Notice.

² Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

³ E.g., EDR Ruling No. 2019-4845; EDR Ruling No. 2015-4181; EDR Ruling No. 2013-3582.

⁴ *Grievance Procedure Manual* § 2.2 n.2 (emphasis added). The Written Notice form includes similar language.

The grievant acknowledges in his dismissal grievance that the March 23, 2020 Written Notice is not subject to relief at this point. However, he argues that “the alleged facts giving rise to” the March 23 Written Notice are relevant to the November 17, 2020 Written Notice and his termination. However, the dismissal grievance is not timely to challenge the merits of the March 23 Written Notice because it was not filed within 30 calendar days of when the grievant received the Written Notice (*i.e.* by April 22, 2020). Nonetheless, some of the facts relating to the March 23 Written Notice may be relevant to the grievant’s arguments about the November 17 Written Notice and his termination. If the hearing officer finds that this is the case, both parties may present evidence about the March 23 Written Notice (and its underlying facts) as background information at the hearing on this matter.

CONCLUSION

The December 15, 2020 dismissal grievance is timely to challenge the November 17, 2020 Group II Written Notice with termination. Because we find that the grievance is untimely to challenge the March 23, 2020 Group II Written Notice as discussed above, the hearing officer will not have the authority to order relief regarding that management action.⁵ A hearing officer will be appointed for the grievant’s qualified challenge to the November 17 Written Notice and his accompanying termination in a forthcoming letter.

EDR’s rulings on matters of compliance are final and nonappealable.⁶

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⁵ See *Rules for Conducting Grievance Hearings* § V(C) (“Challenges to management actions or omissions that have not been qualified in the grievance assigned to the hearing officer are not before that hearing officer, and may not be resolved or remedied.”).

⁶ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).