

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: January 29, 2013; Ruling No. 2013-3524; Agency: Virginia Department of Transportation; Outcome: Grievant Not in Compliance.



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

**COMPLIANCE RULING**

In the matter of the Virginia Department of Transportation  
EDR Ruling Number 2013-3524  
January 29, 2013

The Virginia Department of Transportation (the agency) has requested a ruling on whether the grievant's dismissal grievance, dated January 4, 2012, is in compliance with the grievance procedure.<sup>1</sup> The agency asserts that the grievance challenges, in part, a Written Notice that was not timely grieved. For the reasons set forth below, EDR determines that the grievance is untimely as to this other Written Notice.

FACTS

On December 18, 2012, the agency issued a Written Notice with termination to the grievant. The grievant submitted his dismissal grievance to the Office of Employment Dispute Resolution (EDR) on or about January 4, 2013. Included with his dismissal grievance, was a prior Written Notice, dated December 14, 2011, which is referenced in the grievant's attachments to the Grievance Form A. The agency has subsequently objected to the grievance to the extent it challenges the December 14, 2011 Written Notice, which was apparently not grieved previously. The agency has sought a ruling from EDR to determine whether the grievance is compliant with the grievance procedure in this regard.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he or she knew or should have known of the event or action that is the basis of the grievance.<sup>2</sup> 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.

In this case, the event that forms the basis of the grievance is the agency's issuance of the Written Notice. This Department has long held that in a grievance challenging a disciplinary

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<sup>1</sup> The grievant's dismissal Grievance Form A is dated January 4, 2012. Presumably, however, the grievant intended to date this form January 4, 2013, because he references a December 18, 2012 dismissal date and EDR received this form on January 7, 2013.

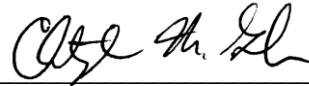
<sup>2</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4.

action, the 30 calendar-day timeframe begins on the date that management presents or delivers the Written Notice to the employee.<sup>3</sup> Thus, if he sought to challenge the December 14, 2011 Written notice, the grievant should have initiated a grievance within 30 days, i.e., no later than January 13, 2012. Therefore, the grievant's January 4, 2013 dismissal grievance is not timely to challenge the December 14, 2011 Written Notice.

### CONCLUSION

For the reasons discussed above, EDR has determined that this dismissal grievance was not filed within the 30 calendar-day period to challenge the December 14, 2011 Written Notice. However, the dismissal grievance does timely challenge the grievant's receipt of the December 18, 2012 Written Notice and his resulting termination.

EDR will appoint a hearing officer to the dismissal grievance in a forthcoming letter. While the dismissal grievance is untimely to challenge and receive relief regarding the December 14, 2011 Written Notice, the facts surrounding that disciplinary action can still be considered as background evidence for the grievant's timely challenge to his termination, if deemed relevant by the hearing officer. EDR's rulings on matters of compliance are final and nonappealable.<sup>4</sup>



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<sup>3</sup> E.g., EDR Ruling No. 2005-986; EDR Ruling No. 2003-147; EDR Ruling No. 2002-118.

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