

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: June 10, 2015; Ruling No. 2015-4160; 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
Ruling Number 2015-4160
June 10, 2015

The grievant has requested a ruling from the Office of Employment Dispute Resolution (EDR) on whether his grievance with the Virginia Department of Transportation (the agency) is in compliance with the grievance procedure. The agency asserts that the grievance does not comply with the grievance procedure because it was not timely initiated. For the reasons set forth below, this grievance is untimely and may be administratively closed.

FACTS

The grievant is employed as an Operation Worker with the agency. On or about March 11, 2015, the grievant was issued a Group III Written Notice with suspension for sleeping during work hours. The grievant completed a Grievance Form A, which he apparently dated on March 19, 2015. The grievant asserts that he gave his grievance to his first step-respondent on March 19, 2015. The first step-respondent denies that she received the grievance on March 19, 2015, and states that she in fact received the grievance on April 14, 2015. The agency closed the grievance as untimely, and the grievant has appealed to EDR.

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.¹ 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 this grievance is the grievant's receipt of a Group III Written Notice on March 11, 2015. Therefore, the grievant should have initiated his grievance within 30 days, i.e., no later than April 10, 2015. Although the grievant asserts that he initiated the grievance with his first step-respondent on March 19, 2015, the first step-respondent states that the grievant gave her the grievance on April 14, 2015, which is consistent with the

¹ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.2.

date stamp on the grievance and the email forwarding the grievance sent by the first step-respondent to human resources. The grievant has not produced any documentation that would challenge the agency's evidence of untimeliness. Section 2.2 of the *Grievance Procedure Manual* provides that a grievant "bears the burden of establishing the date that the grievance was initiated." As the grievant is unable to rebut the agency's claim that the grievance was initiated more than 30 calendar days after the issuance of the Group III Written Notice, EDR must conclude that the grievance is untimely. Thus, the only remaining issue is whether there was just cause for the delay. However, the grievant presents no facts that would constitute evidence of just cause for a delay in initiating his grievance.

CONCLUSION

For the reasons set forth above, EDR concludes that the grievance was not timely initiated and there is no just cause for the delay. The grievance will be marked as concluded due to noncompliance and EDR will close its file. EDR's rulings on matters of compliance are final and nonappealable.²



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² Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).