

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: June 29, 2015; Ruling No. 2015-4181; 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 2015-4181
June 29, 2015

The Virginia Department of Transportation (the “agency”) has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether the grievant’s June 19, 2015 dismissal grievance was timely initiated.¹

The grievance procedure provides that an employee must initiate a written grievance within thirty 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.² 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 agency’s issuance of the Written Notice. EDR has long held that in a grievance challenging a disciplinary action, the thirty calendar-day timeframe begins on the date that management presents or delivers the Written Notice to the employee.³

In this case, the grievant received a Group II Written Notice and was terminated due to his accumulation of discipline on May 19, 2015.⁴ He initiated a dismissal grievance challenging the disciplinary action on June 19, 2015. Because the grievant received the Written Notice on May 19, he should have initiated the grievance within thirty days, i.e., no later than June 18, 2015. He did not initiate the grievance until June 19, and has presented no evidence of just cause for his late filing.

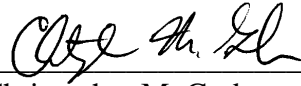
¹ The grievant submitted his grievance to EDR using the Grievance Form A, not the Grievance Form A – Dismissal Grievance. Though he did not use the correct form, it is clear the grievant intended to submit a dismissal grievance and properly followed the procedure for doing so. See *Grievance Procedure Manual* § 2.5.

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

³ E.g., EDR Ruling No. 2013-3582; EDR Ruling No. 2005-986; EDR Ruling No. 2003-147; EDR Ruling No. 2002-118.

⁴ The grievant had two prior active Group II Written Notices in his personnel file. See DHRM Policy 1.60, *Standards of Conduct*, §§ B(2)(b), (B)(3)(c) (stating that the issuance of “[a] second active Group II Notice normally should result in termination” and that “[a]n employee who is issued a Written Notice that would normally warrant termination but who is not terminated due to mitigating circumstances should be notified that any subsequent Written Notice for any level offense during the active life of the Written Notice may result in termination.”). Though the grievant asserts that he believed he had only received a single prior Group II Written Notice, that issue will not be addressed in this ruling because the June 19, 2015 dismissal grievance was not timely filed.

Accordingly, EDR concludes that the grievance was not timely initiated and that there was no just cause for the delay. The parties are advised that the grievance should be marked as concluded due to noncompliance and no further action is required. EDR's rulings on matters of compliance are final and nonappealable.⁵



Christopher M. Grab
Director
Office of Employment Dispute Resolution

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