

Issue: Access to the Grievance Procedure; Ruling Date: January 9, 2019; Ruling No. 2019-4815; Agency: Virginia Alcoholic Beverage Control Authority; Outcome: Access denied.



EMILY S. ELLIOTT
DIRECTOR

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

James Monroe Building
101 N. 14th Street, 12th Floor
Richmond, Virginia 23219
Tel: (804) 225-2131
(TTY) 711

ACCESS RULING

In the matter of the Virginia Alcoholic Beverage Control Authority
Ruling Number 2019-4815
January 9, 2019

On or about November 6, 2018, the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management (“DHRM”) received a Dismissal Grievance Form A from the grievant. The Virginia Alcoholic Beverage Control Authority (the “Authority”) challenges the grievant’s access to the grievance procedure. For the reasons set forth below, EEDR concludes that the grievant does not have access to the state employee grievance process to initiate this grievance.

The grievant was employed as Store Manager with the Authority. On October 5, 2018, the grievant was issued two Written Notices for alleged offenses occurring on August 24, 2018, and terminating his employment with the agency. On or about November 6, 2018, EEDR received a Dismissal Grievance Form A challenging the disciplinary actions and related termination. Though initially the agency sent EEDR a request for hearing officer appointment, while the case was in process, the agency raised the issue of the grievant’s transition from a classified state employee to an employee of the Authority. The agency asserts that, having been part of a group of employees that underwent the transition in August 2018, the grievant no longer has access to the state employee grievance procedure.

When the General Assembly created the Virginia Alcoholic Beverage Control Authority, the Authority was mandated to issue a notice, in writing, to all employees of the Department of Alcoholic Beverage Control, advising that their employment with the Department shall either end or be transferred to the Authority.¹ The Authority was granted the discretion to determine the date upon which this transition would occur for any employee, provided that no transition date would occur before July 1, 2018 (in the absence of a mutual agreement otherwise) or after December 31, 2018.² In this instance, the agency has indicated that the grievant was part of a group of employees with a transition date of August 31, 2018.³

¹ Va. Code § 4.1-101.05(B). The Code further provides that these employees “shall be employed on such terms and conditions as established by the [Authority’s] Board.” Va. Code § 4.1-101.05(A).

² Va. Code § 4.1-101.05(B)

³ The Authority has provided a copy of the purported notice/invitation that was provided to the grievant and completed by him agreeing to the transfer to the Authority effective August 31, 2018.

Pursuant to Virginia Code § 2.2-2905(28), the “Chief Executive Officer, agents, officers, and employees of the Virginia Alcoholic Beverage Control Authority” are exempted from the Virginia Personnel Act (“VPA”). Under Va. Code § 2.2-3002(4), employees “in positions designated in § 2.2-2905 as exempt from the Virginia Personnel Act (§ 2.2-2900 et seq.)” do not have access to the state employee grievance procedure. Instead, the Authority’s Board was given approval to establish the terms and conditions of employment for its personnel, to include adopting “policies and procedures that afford its employees grievance rights.”⁴ Formal disciplinary actions, including terminations, may be grieved utilizing the Authority’s grievance process. In this instance, though the event underlying the disciplinary action occurred just prior to the grievant’s transition to an employee of the Authority, the grievant did not receive disciplinary action until October 5, 2018, after his employment was transitioned to the Authority. Because the grievant was an employee of the Authority at the time of his discipline and subsequent termination, he did not have access to the state employee grievance procedure as of that date.

The Authority has indicated that, though initiated with EEDR, this grievance may now proceed through its grievance process. Accordingly, the dismissal grievance filed by the grievant with EEDR will be closed and will not proceed to a hearing.

EEDR’s access rulings are final and nonappealable.⁵



Christopher M. Grab
Director

Office of Equal Employment and Dispute

⁴ Va. Code § 4.1-101.05(A).

⁵ Va. Code § 2.2-1202.1(5).