

Issue: Compliance – Grievance Procedure (); Ruling Date: August 26, 2013; Ruling No. 2014-3679; Agency: Virginia Department of Transportation; Outcome: Agency 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 2014-3679
August 26, 2013

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management on whether his July 8, 2013 and July 10, 2013 grievances with the Virginia Department of Transportation (the “agency”) are in compliance with the grievance procedure. For the reasons set forth below, both grievances comply with the terms of grievance procedure and will be permitted to proceed.

FACTS

In October 2010, the grievant was transferred to a new position from the agency’s human resources office. At the time of the transfer, the grievant states that he was told the transfer would be temporary and that upon the completion of his service in the new position, he would return at the same pay band and salary. He filed a timely grievance to challenge the transfer on October 22, 2010.¹ Subsequent to his transfer, the agency posted the grievant’s former position for recruitment and, on May 25, 2011, the grievant timely filed another grievance challenging that management action.² As of the date of this ruling, the grievant has not been returned from the temporary assignment.

On July 8, 2013, the grievant initiated a grievance claiming that the agency, by not adjusting his salary pursuant to its most recent compensation study, had misapplied policy and discriminated based on his gender and age. The grievant initiated a second grievance on July 10, 2013, challenging the length of his temporary transfer (now over two years in length) and the agency’s alleged failure to return him to his former position.

Upon receiving the grievances, the agency closed them both for failure to comply with Section 2.4 of the *Grievance Procedure Manual*. The agency argues that some of the grievant’s claims duplicate those made in earlier grievances and that they have otherwise been initiated to harass and/or impede agency operations. The grievant disputes the agency’s assertions and appeals to EDR for a ruling on whether his grievances may proceed.

¹ See EDR Ruling No. 2011-3012.

² See *id.*

DISCUSSION

Duplication

The grievance procedure provides that a grievance must not challenge the same management action challenged by another grievance.³ The agency asserts that the July 8 and July 10, 2013 grievances challenge the grievant's temporary reassignment, which he previously grieved in the October 10, 2010 grievance. The current grievances, however, do not challenge the grievant's reassignment; rather, they challenge actions that have occurred since, and in part as a result of, the reassignment. The July 8 grievance claims, for example, that the grievant did not receive a salary adjustment because the agency incorrectly considered him as having been assigned permanently to his current position rather than assessing his eligibility based on his classification in his original position. Similarly, the July 10 grievance challenges the agency's alleged failure to conclude the temporary assignment after a two-year period. While these claims clearly relate to some previously-grieved issues surrounding the grievant's temporary transfer, the particular management actions at issue in the current grievances have not been challenged in other grievances. The July 8 and July 10, 2013 grievances are not, therefore, duplicative of other grievances.⁴

Harass or Impede Agency Operations

Section 2.4 of the *Grievance Procedure Manual* provides that a grievance cannot "be used to harass or otherwise impede the efficient operations of government."⁵ This prohibition is primarily intended to allow an agency to challenge issues such as the number, timing, or frivolous nature of grievances, and the related burden to the agency.⁶ While neither the number, timing, or frivolous nature of the grievances, nor the related burden to an agency, are controlling factors in themselves, those factors could, in some cases, support an inference of harassment cumulatively or in combination with other factors. Such determinations are made on a case-by-case basis, and because closing a grievance on these grounds is an extreme sanction, the analysis of such a claim carries a commensurately high burden.⁷

To summarize the agency's claims on this point, the agency argues that the grievant has "consumed a significant amount of [the agency's] time" by filing multiple grievances and submitting requests for documentation under the Freedom of Information Act ("FOIA") as part of several attempts to challenge his temporary transfer. The agency further notes that, at some point, the grievant also filed a discrimination complaint with the Office of Equal Employment Services ("OEES"), which was determined to be unfounded. While the grievant's FOIA requests and OEES complaint may have required the use of agency resources, those actions do not here render the current grievances harassing or frivolous simply because there may be a connection

³ *Grievance Procedure Manual* § 2.4.

⁴ Management actions that have been addressed in previous grievances may, however, be discussed as background information, to the extent they may be relevant to the currently grieved management actions.

⁵ *Grievance Procedure Manual* § 2.4.

⁶ See EDR Ruling No. 2010-2374; EDR Ruling No. 2002-224.

⁷ See EDR Ruling No. 99-138 (Sept. 21, 1999).

between the grievances and either documents sought through FOIA or conduct complained of to OEES.

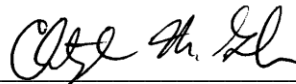
Prior to initiating the current grievances, it does not appear that the grievant has filed a grievance in over two years. In contrast, the grievant in EDR Ruling Number 99-138 filed twenty-four grievances over a period of approximately two years, many within a span of days.⁸ Similarly, while the salary and reassignment issues raised in the current grievances are closely connected with the actions challenged in the grievant's earlier grievances, they raise legitimate claims about management actions and omissions that have occurred since the prior grievances were concluded. In EDR Ruling Number 2013-3204, on the other hand, EDR closed a grievance challenging an agency's written directive to the grievant to modify a presentation because the actions challenged and relief requested by the grievant were frivolous and presented no issues of substance.⁹

The number, timing, and nature of the grievances here clearly do not rise to the level of harassment that this Office has required in the past to justify the closure of a grievance on these grounds. We are not persuaded that the grievant has abused the grievance process or sought to harass by initiating the July 8 and July 10, 2013 grievances. A grievant's decision to dispute management actions with which he disagrees will inevitably create work for an agency. However, the grievance record does not support the conclusion that the grievant has raised completely baseless or unreasonable claims. The agency has not met the high burden required to close a grievance for harassing or impeding agency operations.

CONCLUSION

Based on the foregoing, the grievant's July 8 and July 10, 2013 grievances are re-opened and shall be permitted to proceed. The grievances should be returned to the appropriate second step-respondent (based on our understanding of the grievant's reporting line) to be addressed on the merits of their claims. Once received, the second-step respondent must schedule the second step meeting within five workdays.¹⁰

EDR's rulings on matters of compliance are final and nonappealable.¹¹



Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁸ *See id.*

⁹ *See* EDR Ruling No. 2012-3204.

¹⁰ *Grievance Procedure Manual* § 3.2.

¹¹ *See* Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).