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COMPLIANCE RULING

In the matter of the Department of Education
Ruling Numbers 2021-5127, 2021-5128, 2021-5129
July 17, 2020

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) on whether his three grievances filed with the Department of Education (the “agency”) were timely initiated. For the reasons set forth below, the grievances are considered timely and may proceed as described in this ruling.

FACTS

On May 19, 2020, the agency issued two Group II Written Notices to the grievant and demoted him, effective May 25, 2020, based on this accumulation of disciplinary actions. The agency sent the disciplinary materials by email on May 19, 2020 and certified mail.¹ The grievant appears to have completed three separate grievances to challenge the disciplinary actions and surrounding issues. On June 18, 2020, the grievant states that he procured a courier service to deliver the three packages directly to the agency. According to documentation purporting to be from the courier submitted by the grievant, the courier attempted delivery unsuccessfully at least on June 22 and 23, ultimately completing delivery on June 24. The grievant emailed copies of the grievances to the agency on June 22, 2020, as well. Because June 22 was the first date the agency received the grievances, the agency understandably believed that the grievances were not filed within 30 calendar days of the grievant’s receipt of the Written Notices. Accordingly, the agency administratively closed two of the three grievances and limited its response to the third grievance based on the allegedly untimely challenge to the Written Notices. The grievant appeals these determinations and requests this ruling.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he 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 30-calendar-day period

¹ The date of delivery of the certified mailing has no bearing on the outcome of this ruling because the grievant received the Written Notices by email on May 19.

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

without just cause, the grievance is not in compliance with the grievance procedure and may be administratively closed. EDR has long held that in a grievance challenging a disciplinary action, the 30-calendar-day timeframe begins on the date that management presents or delivers the Written Notice to the employee.³ Further, the *Grievance Procedure Manual* states that “[a]n employee who wishes to appeal a disciplinary action must file a grievance within 30 calendar days of receipt of the Written Notice.”⁴

In this case, the primary issues forming the basis of the grievances are the grievant’s receipt of two Group II Written Notices on May 19, 2020. Accordingly, the applicable 30-calendar-day period to initiate a grievance ended on June 18, 2020. The first time the agency received the grievances was by email on June 22. As such, the agency quite reasonably asserted that the grievances were not initiated timely. Indeed, the agency’s conclusion on this point was further understandable based on confusion created by the grievant. The agency inquired as to whether the grievant had mailed his grievances within the deadline. The grievant indicated that he had indeed mailed the grievances. When the agency received the packages delivered by courier on June 24, they were not postmarked and reflected hand delivery. Accordingly, the agency understandably came to the conclusion that the grievant had not mailed the grievances at all, much less that he had mailed them within the deadline for initiation. The grievances, however, were not mailed, but rather were sent by courier service.

The *Grievance Procedure Manual* provides that the “employee bears the burden of establishing the date that the grievance was initiated.”⁵ The *Manual* additionally states that “for purposes of establishing when an e-mailed or mailed grievance was initiated, the date/time of sending and/or postmark date is considered the initiation date.”⁶ The grievance procedure does not address specifically the circumstance of delivery by courier service. However, it is EDR’s interpretation that delivery to a courier service within the initiation deadline is the same as delivery to a mail service within the initiation deadline, assuming there is sufficient evidence presented that supports such a timely delivery. In this case, the grievant has provided a copy of the manifest purporting to be from the courier service. EDR has been presented with nothing further that would cast doubt the veracity of these documents. Indeed, the time and date of final delivery noted on the manifest appears to coincide with information provided by the agency from the loading dock employee who received the grievance packages. As such, we are persuaded that the grievant has presented sufficient evidence to demonstrate that he provided the grievance packages to a courier service within the deadline for initiation of the grievances. As such, the three grievances are considered timely and will be allowed to proceed.

CONCLUSION

Based on the discussion above, EDR finds that the grievant’s three grievances were timely initiated and must be allowed to proceed. The agency is directed to return the grievances to the member of management who first responded as the initial step respondent. The step respondent

³ E.g., EDR Ruling No. 2015-4181; EDR Ruling No. 2013-3582; EDR Ruling No. 2005-986.

⁴ *Grievance Procedure Manual* § 2.2 n.2 (emphasis added). Similar language is also listed on the Written Notice form itself.

⁵ *Grievance Procedure Manual* § 2.2.

⁶ *Id.*

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must respond to all three grievances in light of EDR's determination that all three grievances are to be considered timely. EDR's rulings on matters of compliance are final and nonappealable.⁷

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⁷ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).