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COMPLIANCE RULING

In the matter of the Virginia Community College System
Ruling Number 2020-5046
February 6, 2020

The Virginia Community College System (the “agency”) has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”)¹ on whether the grievant’s January 22, 2020 dismissal grievance was timely initiated. For the reasons set forth below, this grievance is timely and may proceed as described in this ruling.

FACTS

On December 19, 2019, the agency issued a Group II Written Notice to the grievant and terminated his employment based on his accumulation of disciplinary action.² The grievant signed in the appropriate section on the Written Notice form to acknowledge his receipt of the document on that date. The termination was not effective until several days later, on December 23. The grievant initiated a dismissal grievance challenging the disciplinary action and his termination directly with EDR on January 22, 2020.³ In response to EDR’s notification of receipt of the grievance, the agency asserts that the grievance was not timely initiated because it was not filed within 30 calendar days of the grievant’s receipt of the Written Notice.

DISCUSSION

Ordinarily, if a Grievance Form A does not comply with the requirements for initiating a grievance, the agency may notify the employee, using the Grievance Form A, that the grievance

¹ The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

² The Written Notice form states that the grievant had a prior active Group II Written Notice that was issued on October 14, 2019. Pursuant to DHRM Policy 1.60, *Standards of Conduct*, the issuance of “[a] second active Group II Notice normally should result in termination.” DHRM Policy 1.60, *Standards of Conduct*, at 9.

³ The Grievance Form A is dated January 21, 2020, and an attachment to the grievance is dated January 20. However, the grievance was faxed to EDR on January 22, and EDR therefore finds that it was initiated on January 22.

will be administratively closed.⁴ Because dismissal grievances are initiated directly with EDR,⁵ an agency is essentially unable to follow this process as outlined. The agency has therefore requested a ruling from this Office regarding the issue of alleged initiation noncompliance.

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.⁶ 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. 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.⁷ 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.”⁸

In this case, the event that forms the basis of the grievance is the grievant’s termination via the issuance of a Group II Written Notice, dated December 19, 2019. The information provided by the agency indicates that the grievant was notified about his termination on December 19. However, the effective date of the termination was several days later—on December 23. While an employee’s receipt of a Written Notice ordinarily marks the beginning of the 30 calendar days in which the disciplinary action may be challenged through a grievance, this case presents a unique procedural issue because the agency elected to make the grievant’s termination effective several days *after* his receipt of the Written Notice.

EDR finds that this situation is best analogized to its practice for grievances challenging a layoff. In layoff grievances, EDR has long held that the final event forming the basis of such a grievance is the actual effective date of layoff, not a grievant’s receipt of a Notice of Layoff or Placement indicating that such an action will likely occur in the future.⁹ EDR considers the effective date of layoff as the final date that the 30-day filing clock begins to run because circumstances can change from the time an employee receives a Notice of Layoff or Placement to the time they are actually laid off. A grievant may initiate a grievance at any point prior to the final effective date of layoff, but EDR also permits such a grievance to be filed within 30 calendar days of a grievant’s actual separation by layoff.

Applying this reasoning to the facts in the present case, EDR concludes that a grievance challenging a termination via Written Notice is timely if it is initiated within 30 calendar days of the grievant’s receipt of the Written Notice *or* the effective date of the grievant’s termination, whichever is later.¹⁰ However unlikely, it is possible that an agency’s decision to terminate an employee might change between the issuance of a Written Notice and the effective date of termination. Moreover, the core management action at issue in such a case—the employee’s termination—is, if timely grieved, inseparable from a challenge to the Written Notice imposing

⁴ *Grievance Procedure Manual* § 2.4.

⁵ *Id.* § 2.5.

⁶ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* §§ 2.2, 2.4.

⁷ *E.g.*, EDR Ruling No. 2015-4181; EDR Ruling No. 2013-3582; EDR Ruling No. 2005-986.

⁸ *Grievance Procedure Manual* § 2.2 n.2 (emphasis added). Similar language is also listed on the Written Notice form itself.

⁹ *See, e.g.*, EDR Ruling No. 2014-3738; EDR Ruling No. 2013-3627; EDR Ruling No. 2011-2707.

¹⁰ *See* EDR Ruling No. 2020-5013.

that penalty. Accordingly, the grievant's January 22, 2020 grievance is timely to challenge the Group II Written Notice and the grievant's termination because it was filed within 30 calendar days of the date on which the grievant was actually terminated: December 23, 2019.

CONCLUSION

Based on the discussion above, EDR finds that the grievant's January 22, 2020 grievance was timely initiated and must be allowed to proceed. The agency is directed to submit a Form B to EDR **within five workdays of the date of this ruling**. EDR's rulings on matters of compliance are final and nonappealable.¹¹



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