

Issue: Compliance-30 day rule, Actions Occurring to Others; Ruling Date: February 8, 2002; Ruling #2001-143; Agency: Department of Motor Vehicles; Outcome: Grievant out of compliance



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Motor Vehicles

EDR Ruling # 2001-143  
February 8, 2002

**ISSUE:**

Did the grievant initiate a grievance pertaining directly and personally to the grievant's own employment in a timely manner?

**RULING:**

No. The parties are advised that the grievance should be marked as concluded due to noncompliance and no further action is required. This Department's rulings on matters of compliance are final and nonappealable.<sup>1</sup>

**EXPLANATION:**

The grievant is employed with a Department of Motor Vehicle (DMV) District Office. Prior to 1999, the grievant had been selected as a Motor Carrier Trainer and was responsible for curriculum development and for conducting training presentations. In 1999, the District Office designated certain employees as New Employee Trainers and Motor Carrier Trainers. In April or May 2001, the grievant was informed that she would no longer conduct Motor Carrier trainings, that the separate Motor Carrier training program would be eliminated, and that all future training would be combined and coordinated through the designated New Employee Trainers who were renamed "Technical Trainers." Also in early 2001, an agency-wide decision was made under DMV's Salary Administration Plan to grant Technical Trainers a five- percent increase in salary.<sup>2</sup> The grievant was no longer designated as a Trainer, no longer performed formal presentations and training, and did not receive the pay increase.

---

<sup>1</sup> See Va. Code § 2.2-3003(G).

<sup>2</sup> Department of Human Resources Management (DHRM) Policy 3.05 provides that state agency compensation responsibilities include the development and utilization of an Agency Salary Administration Plan to outline implementation of the Compensation Management System and for "ensuring consistent application of pay decisions." DHRM Policy 3.05 "Definitions" (effective September 25, 2000, revised March 1, 2001). Similarly, DMV's Salary Administration Plan states that its purpose is to "pay its employees in a manner sufficient to support and develop a high performance workforce." *DMV Salary Administration Plan* (adopted September 25, 2000), "DMV Compensation Philosophy."

On July 2, 2001, the grievant first discovered that other employees, designated and performing as Technical Trainers, had received the pay increase. On July 17, 2001, the grievant initiated a grievance alleging that the agency had unfairly compensated the Technical Trainers and had discriminated against her. Management responded at the first resolution step that the grievant was out of compliance because the grievance was not initiated within 30 calendar days of the event or action giving rise to the grievance and because the grievance did not pertain directly and personally to the grievant's own employment.

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the event or action that is the basis of the grievance, unless there is just cause for the delay. 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. Additionally, any grievance that does not pertain directly and personally to the grievant's own employment may be closed for noncompliance.<sup>3</sup>

Reading these procedural requirements together, the compliance issue to be decided in this case is whether the grievant's own employment was directly and personally affected during the 30 calendar days immediately preceding the initiation of her July 17, 2001 grievance.<sup>4</sup> This Department has determined that the grievant's employment was not directly and personally affected during the required period (from June 17, 2001 to July 17, 2001). More specifically, the event that directly and personally affected the grievant's employment was management's April/May, 2001 decision to (1) eliminate the Motor Carrier Training program as separate program and (2) rename the New Employee Trainers as "Technical Trainers." The grievant could have grieved management's decision within 30 calendar days of her knowledge of the decision but did not do so. Accordingly, her July 17<sup>th</sup> grievance is out of compliance with the grievance process because it was not initiated within 30 calendar days of an event that related directly and personally to her own employment.

---

Neil A.G. McPhie, Esquire  
Director

---

<sup>3</sup> See *Grievance Procedure Manual* §2.4 (3), p 6. For that reason, grievances that challenge the compensation of other employees, without more, are out of compliance with the grievance procedure and may be closed.

<sup>4</sup> Compare *Brinkley-Obu v. Hughes Training*, 36 F.3d 336, 351 (4<sup>th</sup> Cir. 1994)(for an Equal Pay Act claim to be timely, the employer's alleged wrongful conduct must have *affected the plaintiff* during the statute of limitations period).