

Issue: Compliance-30 day rule; Ruling Date: February 21, 2002; Ruling #2001-144;
Agency: Department of Transportation; Outcome: Grievant out of compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Transportation
Ruling Number 2001-144
February 21, 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.¹

EXPLANATION:

The grievant is employed by the agency as a Transportation Operator II. His date of hire was August 4, 1994. The grievant claims that in late June or early July 2001, he discovered for the first time, that other employees in the Transportation Operator II Role were hired by the agency at a higher starting salary than he was, and that he is the lowest paid employee in such a position in his work unit. 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.²

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.³ 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.⁴

¹ See Va. Code § 2.2-1001 (5).

² Management also asserts that the grievant's claim to be the lowest paid Transportation Operator II in his work unit is factually incorrect.

³ *Grievance Procedure Manual* § 2.4 (1), p. 6.

⁴ *Grievance Procedure Manual* § 2.4 (3), p. 6.

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 his grievance.⁵ This Department has determined that the grievant's employment was not directly and personally affected during the required period (from June 23 to July 23, 2001). More specifically, the event that directly and personally affected the grievant's employment was management's 1994 designation of his starting pay. On the grievant's Form A and attached letter, and in his discussion with this Department, the grievant has stated only that he believes it is unfair that he is the lowest paid Transportation Operator II in his work unit. He has not presented any additional facts, nor does his grievance Form A allege, more than that. Of itself, the agency's decision in subsequent years after 1994 to hire other Transportation Operator II's at a higher starting salary has no direct bearing on the terms and conditions of the grievant's employment in 2001.

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⁵ Compare *Brinkley-Obu v. Hughes Training*, 36 F.3d 336, 351 (4th 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).