Issue: Compliance/30-day rule; Ruling Date: January 24, 2002, Ruling #2001-145; 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 2001-145
January 24, 2002

ISSUE:

Did the grievant initiate the grievance in a timely manner?

RULING:

No, the grievance was filed beyond the 30-calendar day period without just cause and is therefore untimely. 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:

In this case, the grievant claims that management unfairly failed to select him for a vacant Ferry Operator position. The grievant was interviewed for the position by a panel of three managers on May 14, 2001, and was informed on June 6, 2001, both orally and in writing, that he was not selected for the position. He initiated his grievance on July 23, 2001. The first step respondent notified the grievant by letter dated July 30, 2001 that he had not initiated his grievance within the required 30 calendar day timeframe, and therefore his grievance would not be processed further.

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the day he knew or should have known of the event or action that is the basis of the grievance, unless there is just cause for the delay.[2] Further, even when discussions with management to resolve the dispute are ongoing, "the written grievance must be initiated within 30 calendar days," a requirement that may be extended only if the parties agree.[3] The July 23, 2001 grievance was initiated more than 30

[1] See Va. Code § 2.2-1001(2), (3), and (5).
[2] See Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4(1), page 6
[3] Grievance Procedure Manual § 2.2, page 5.

calendar days from the June 6, 2001 notice that the grievant was not selected for the Ferry Operator position, and the agency had not agreed to extend the 30 calendar day deadline. Thus, the only issue remaining is whether there was just cause for the delay.

The grievant contends that the grievance was not timely filed because human resources promised to respond to his concerns about the selection process within thirty days, but did not do so until more than thirty days later, on July 19, 2001. The grievant claims that he was thus intentionally misled in order for the time frame to lapse.

This Department has long held that it is incumbent upon the employee to know of his rights and obligations under the grievance procedure, and that awaiting the outcome of discussions with management or human resources does not constitute just cause for failure to initiate a grievance in a timely manner. In addition, there are no facts to show that the grievant was "actively misled" or "lulled into inaction" by anyone at the agency into initiating his grievance late. [4] As stated above, the grievant knew on June 6, 2001 that he was not selected for the position because another candidate was found to be better suited. The grievant has not presented any evidence that the agency ever actively misled him about the pertinent facts of this matter. Further, the statement by human resources that they would "get back to [the grievant] within thirty days," if anything, is consistent with the requirement to initiate a grievance within thirty days. It is not credible that the grievant was misled or lulled into inaction by this statement.

Accordingly, the grievant's decision to await a response from human resources before initiating his grievance does not constitute just cause for his untimely filing.

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Director

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[4] Courts have recognized that an employer may not assert a defense based on a limitations period if that employer has "actively misled" the employee (See Martinez v. Orr, 738 F.2d 1107, 1110 (10th Cir. 1984) (quoting Wilkerson v. Siegfried Ins. Agency, Inc., 683 F.2d 344, 348 (10th Cir. 1982)), or if an employee has been "lulled into inaction" by his employer or other authorities (Martinez, 738 F.2d at 1110 (quoting Carlile v. South Routt Sch. Dist. RE 3-J, 652 F.2d 981, 986 (10th Cir. 1981))).