

Issue: Compliance/Actions Occurring to Others, 30-day rule; Ruling Date: February 26, 2002; Ruling #2001-153; Agency: Department of Motor Vehicles; Outcome: Out of compliance, grievant



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR
In the matter of Department of Motor Vehicles

EDR Ruling #2001-153
February 26, 2002

ISSUE:

Did the grievant initiate her grievance 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 with a Department of Motor Vehicles District Office. Prior to 1999, employees informally assumed various training duties and responsibilities as a part of their regular performance expectations, without changes to their position description or additional compensation.² In 1999, the District Office designated certain employees as New Employee/Technical Trainers ("Trainers"). (While DMV employees are still permitted to assist with on-the-job (OTJ) training of new employees, only the designated Trainers prepare and conduct formal presentations and training.) The grievant was aware that certain employees had been designated as Trainers, but did not inquire about or pursue selection as a Trainer prior to her grievance in 2001, after learning about their 2001 pay increase.

Early in 2001, an agency-wide decision was made under DMV's Salary Administration Plan to grant Trainers a five-percent increase in salary.³ The grievant had not been

¹ Va. Code § 2.2-3003(G).

² It is noted that the grievant conducted a training class in 1990.

³ 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."

designated as a Trainer, did not perform formal presentations and training, and did not receive the pay increase.

On July 31, 2001, the grievant first discovered that another employee, designated and performing as a Trainer, had received the pay increase. On August 10, 2001, the grievant initiated a grievance alleging that the agency had unfairly applied the selection process for the Trainers in 1999, thereby resulting in the designated persons receiving guidance and support which increased their skill level and led to increased compensation in 2001. 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.⁴

The threshold compliance issue to be decided in this case is whether the grievant timely initiated her August 10, 2001 grievance.⁵ This Department has determined that the event that gave rise to the August 10th grievance was management's 1999 designation of Trainers, which excluded the grievant and which she could have grieved within 30 calendar days of her knowledge of the designation, regardless of whether compensation was permitted at that time. The agency's decision two years later in 2001 to increase the salary of Trainers is simply a present consequence of the 1999 designation and has no direct bearing on the terms and conditions of the grievant's employment in 2001. Because the August 10th grievance was not initiated within 30 calendar days of the event that gave rise to her grievance, it is out of compliance with the grievance process and may be administratively closed.⁶

Neil A.G. McPhie, Esquire
Director

⁴ 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.

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).

⁶ Because the grievance is not timely, the issue of whether the grievance relates directly and personally to grievant need not be decided in this ruling.