

Issue: Compliance-30-day rule; Ruling date: December 27, 2001; Ruling #2001-183;
Agency: Department of Juvenile Justice; Outcome: Grievant out of compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Juvenile Justice
Ruling Number 2001-183
December 27, 2001

The grievant has requested a compliance ruling in the September 12, 2001 grievance with the Department of Juvenile Justice. The agency contends that the grievance was filed beyond the required 30 calendar days without just cause.

FACTS

On July 27, 2001, the grievant met with management to discuss her newly assigned shift and the accommodation of a previously approved vacation under that new shift. On September 12, 2001, over 30 calendar days from July 27, she filed her grievance challenging her new shift and seeking a return to her former schedule.

Although unsure as to the date, the grievant claims that she had attempted to file her grievance earlier with a personnel analyst when she went to her workplace to sign a timesheet related to a short-term disability leave. She asserts that the personnel analyst refused to accept her grievance, but directed her to deliver her grievance to her supervisor, whom the grievant states was on vacation that day. The grievant further claims that the personnel analyst told her that she would not be penalized for a late submission. The personnel analyst acknowledges that he refused to accept the grievance, but claims that he directed the grievant to present her grievance to her Captain if her supervisor was unavailable. He denies any statement regarding filing outside the 30-calendar day timeframe.

Neither the grievant or the personnel analyst remembers the exact date that this discussion took place, but the agency representative who witnessed the grievant signing her disability leave timesheet asserts that the date was August 28, 2001, as is also

reflected in the time sheet itself, signed and dated by the grievant. There is no written agreement by the agency to extend or waive the 30 calendar day filing requirement.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date she 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.¹ This Department has long held that if an agency challenges the timeliness of a grievance, it is incumbent upon the employee to show that it was timely filed. Thus, if an agency agrees to extend the 30 calendar day filing requirement, or to waive it entirely, that agreement *should* be in writing. While a written agreement is not mandatory, it is incumbent upon the grievant to provide sufficient proof that both parties did in fact agree to extend the filing period.

In this case, the grievant knew or should have known of the shift change challenged by her grievance no later than July 27, 2001, when she met with management to discuss accommodating her vacation under the changed schedule. Thus, under the 30 calendar day rule, the grievant had until August 26, 2001 (30 calendar days from July 27, 2001)² to file her grievance regarding the shift change, unless the agency had in fact agreed to extend that time frame or waive it altogether.

Here, the grievant has not provided sufficient proof of such an extension or waiver. Her recollection of the August 28 discussion about her grievance differs from that of the personnel analyst, and there is no other evidence to support her claim that the agency had agreed to extend the filing date beyond the 30 calendar days. Accordingly, the September 12, 2001 submission is unquestionably untimely. Moreover, the grievant's attempt to file her grievance on August 28 was itself untimely.

Finally, there appears to be no just cause for the grievant's delay in filing.³ The grievant has offered no evidence that her medical leave or any other situation prevented her from filing her claim in a timely fashion.

CONCLUSION

For the reasons discussed above, this Department finds that the September 12, 2001 grievance was filed beyond the 30 calendar day time period without just cause. The parties are advised that the grievance should be marked as concluded due to

¹ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4(1), page 6.

² The day of the event that forms the basis the grievance (in this case, news of the schedule change) is not included in the thirty-day calculation. The first day following the event is counted as the first of thirty days.

³ "Just cause" is defined under the grievance procedure as "[a] reason sufficiently compelling to excuse not taking a required action in the grievance process." *Grievance Procedure Manual*, § 9, p. 24.

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noncompliance and no further action is required. This Department's rulings on matters of compliance are final and nonappealable.⁴

Neil A.G. McPhie, Esquire
Director

Deborah M. Amatulli
Employment Relations Consultant

⁴ Va. Code § 2.2-3003(G).