

Issue: Qualification-work conditions-travel reimbursement; Ruling Date: April 4, 2002;
Ruling #2002-004; Agency: Department of Taxation; Outcome: not qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of Virginia Department of Taxation
No. 2002-004
April 4, 2002

The grievant has requested a ruling on whether his September 9, 2001 grievance with the Virginia Department of Taxation (agency) qualifies for a hearing. The grievant claims that the agency misapplied policy when it decided that he must drive either: (1) a state-owned vehicle, or (2) his personal car at a reduced mileage reimbursement rate. As relief, the grievant wants to be able to continue driving his personal vehicle and be reimbursed at the higher rate. For the reasons discussed below, this grievance does not qualify for hearing.

FACTS

The grievant works for the agency as an auditor. Because he had refused the use of a state vehicle, he was informed in September 2001 that his mileage reimbursement would be at the lower rate designated by state travel regulations for personal cars.¹ The grievant filed a grievance on September 9, 2001 asserting that it would “not be economically feasible for the State to require [him] to drive a state-owned car” and that the agency had not conducted the required cost/benefit analysis.

DISCUSSION

By statute and under the grievance procedure, management is reserved the exclusive right to manage the affairs and operations of state government.² Although all complaints initiated in compliance with the grievance process may proceed through the three resolution steps set forth in the grievance statute, thereby allowing employees to bring their concerns to management’s attention, only certain issues qualify for a hearing. Claims relating to issues such as the methods, means and personnel by which work activities are carried out generally do not qualify for a hearing (including management’s determination on mileage reimbursement), unless the grievant presents evidence raising a sufficient question as to whether discrimination, retaliation, or discipline may have improperly influenced management’s decision, or whether state policy may have been misapplied.³ In this case, the grievant claims that policy has been misapplied.

¹ The grievant was informed that his mileage rate would be reduced from \$.325 per mile to \$.19 per mile.

² Va. Code § 2.2-3004 (B).

³ Va. Code §2.2-3004 (A) and (C); *Grievance Procedure Manual* § 4.1 (c) page 11.

For an allegation of misapplication of policy to qualify for a hearing, there must be facts that raise a sufficient question as to whether management violated a mandatory policy provision, or whether the challenged action, in its totality, was so unfair as to amount to a disregard of the intent of the applicable policy. Further, if a claim of policy misapplication is qualified and proven at hearing, the relief that a hearing officer can grant is limited to directing the agency to reapply the policy from the point at which it was misapplied. A hearing officer may not award damages or attorney's fees or any other prospective relief.⁴

The grievant asserts that management did not conduct the cost/benefit analysis required by policy. He also claims that such an analysis would have shown that the continued use of his personal vehicle for agency business was more cost effective, and thus justified reimbursement at the higher rate. In support of this claim, he notes that there is a significant distance (20 miles) between his home and the nearest state operated maintenance facility. Furthermore, he claims that the agency arbitrarily established a cut-off of 7,500 miles, at which point employees are not allowed to use their personal vehicle at the higher mileage rate of \$.325. He asserts that it is unfair for an employee who drives 7,500 miles annually (at a rate of \$.325 per mile) to receive a larger reimbursement than a driver who drives 12,000 miles annually (at a rate of \$.19 per mile).

The applicable policies are contained in the State Travel Regulations, which apply to all Executive Branch agencies.⁵ While the grievant is correct that policy requires a cost/benefit analysis, policy does not define the method that must be used, citing only general guidelines and circumstances. Management had concluded that it was cost advantageous to assign state cars to employees who drive more than 7,500 miles per year based on the Department of General Services determination that the expense rate for a car driven 7,059 miles annually is \$.325 per mile. When a car is driven more than 7,059 miles annually, the expense rate per mile incrementally falls below \$.325, and at 15,000 miles, the rate equals \$.19 per mile. In other words, management determined that when an employee drives more than 7,059 miles annually, the state saves money by issuing the employee a car, because the expense rate per mile for the issued car is less than \$.325 per mile.⁶ The agency's analysis cannot be considered arbitrary or a violation of a mandatory travel policy. Additionally, the grievant has offered no evidence to rebut the agency's position that use of a state vehicle would be more cost effective in instances like his.

⁴ *Grievance Procedural Manual* § 5.9, pages 15-16; *Rules for Conducting Grievance Hearings*, page 10.

⁵ See *State Travel Regulations*, General Accounting Topic No. 20335, Office of the Comptroller, Transportation: Personally Owned, pages 23-24. Under the Travel Regulations, an employee who uses his own vehicle when use of a personally-owned vehicle is cost justified or a state vehicle is not available, receives an expense reimbursement of \$.325 per mile. When an employee uses his vehicle for his convenience, he receives reimbursement at a rate of \$.19 per mile.

⁶ The agency rounded the 7,059 figure to 7,500 and used that number as the basis for setting its policy regarding mileage reimbursement and car assignment.

As a final point, the agency cannot be considered to have acted so unfair as to amount to a disregard of the intent of the applicable policy. The grievant was offered the use of a state car by management and he refused, which resulted in his reimbursement at the lower rate. For all the reasons set forth above, this grievance does not qualify for hearing.

APPEAL RIGHTS AND OTHER INFORMATION

The enclosed sheet contains information regarding the actions the grievant may take as a result of this ruling. If the grievant wishes to appeal this determination to the circuit court, he must notify the Human Resources Office, in writing, within five workdays of receipt of this ruling. If the court should qualify the grievance, within five workdays of receipt of the court's decision, the agency will request the appointment of a hearing officer unless the grievant should notify them that he does not want to proceed.

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