

Summary: Compliance/Consolidation request by grievant; Ruling Date: May 14, 2002; Ruling #2002-043; Agency: Department of Transportation; Outcome: Consolidation recommended.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Transportation
Ruling Number 2002-043
May 14, 2002

The grievant has requested a compliance ruling regarding the grievances he initiated on December 26, 2001, and February 24, 2002, with the Department of Transportation. The grievant seeks consolidation of the grievances. The agency opposed consolidation because it asserts that the grievances address two separate incidents.

FACTS

The grievant received a Group I Written Notice on December 3, 2001, for obscene or abusive language. On December 26, 2001, the grievant initiated a grievance challenging the Written Notice.

On February 11, 2002, the grievant was presented with another Group I Written Notice, this one based on alleged abusive language/disruptive behavior. On February 24, 2002, the grievant filed a grievance challenging the February 11th Written Notice. The February 24th grievance alleges, among other things, that management retaliated against the grievant for his December 26th grievance.

DISCUSSION

The Department has long held that grievances may be consolidated by mutual agreement of the parties, or absent such an agreement, by this Department whenever more than one grievance is pending involving the same parties, legal issues, policies, and/or factual background.¹ EDR strongly favors consolidation and will grant consolidation unless there is a persuasive reason to process the grievances individually.² In this case,

¹ *Grievance Procedure Manual*, § 8.5, page 22.

² *Id.*

although the grievances arose from two separate circumstance, the events giving rise to the grievances are closely related: for example, both grievances challenge the same management action -- Group I Notices based on the grievant's alleged abusive language. In addition, where the issue of retaliation is grieved, and where the alleged retaliation is based on an earlier grievance, consolidation of the retaliation grievance with the earlier grievance is often appropriate. Consolidation of the grievances should provide an effective and efficient means of resolving the disputed but related issues at hand.

For the reasons discussed above, this Department has determined that consolidation is appropriate and warranted under the facts and circumstances surrounding these two grievances. Thus, the grievances are consolidated and will proceed as one grievance hereafter.³ The grievant and the agency are advised that the grievant has 5 workdays from receipt of this letter to either conclude the consolidated grievance or advance it to the third resolution step. This Department's rulings on matters of compliance are final and nonappealable.⁴ Please note that this compliance ruling has no bearing whatsoever on the substantive merits of the grievance.

Claudia T. Farr
Director

William G. Anderson, Jr.
Senior Employment Relations Consultant

³ Please note that if the consolidated grievance proceeds to hearing, consolidation should not prevent the hearing officer from addressing the grievances separately as needed for purposes of establishing procedural aspects of the hearing or in determining the substantive merits of each grievances.

⁴ Va. Code § 2.2-1001(5).