

Issue: Compliance-30-Day Rule; Ruling Date: June 27, 2002; Ruling #2002-118;
Agency: Department of Transportation; Outcome: grievant in compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution
COMPLIANCE RULING OF THE DIRECTOR

In the matter of Department of Transportation/No. 2002-118
June 27, 2002

The grievant has requested a compliance ruling for his grievance initiated with the Department of Transportation on May 10, 2002. The agency contends that the grievant did not initiate his grievance within the 30 calendar day time period required by the grievance procedure.¹

FACTS

On March 28, 2002, grievant received a letter from the agency stating that he would be removed from employment and had until the end-of-business on April 5, 2002, to present supporting documentation and reasons that he should not be separated or removed from employment. Subsequently, by letter and Written Notice dated April 5, 2002, the agency terminated grievant's employment. The letter and Written Notice were sent certified mail with return receipt requested. Prior to receipt of the Written Notice with termination by the grievant, the grievant and the agency engaged in written and verbal communications regarding grievant's termination. These communications included a letter from the agency to the grievant regarding benefits upon termination, a phone conversation between management and the grievant, and a letter to management from the grievant.

The Written Notice terminating his employment was delivered on April 11, 2002, as indicated by the grievant's signature and date of delivery on the certified mailing return. The grievant initiated his grievance, via certified mail, on May 10, 2002, which is the post mark date on the envelope containing the grievance. The agency returned the grievance on May 20, 2002, for non-compliance with the procedural requirements of the grievance procedure claiming that the grievant knew or should have known of his removal from employment on April 9, 2002 and thus his grievance should have been filed no later than May 9, 2002. The agency contends that grievant's knowledge of the termination came from his receipt of a letter regarding benefits upon termination and a phone conversation he had with the agency, both of which took place on April 9, 2002.

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

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date he knew or should have known of the event or action that is the basis of the grievance.² It is incumbent upon the grievant to initiate a grievance in a manner that would allow for verification of the date of initiation – for example, by obtaining a date-stamp, postmark, or mailing receipt. 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. Further, this Department has long held that in a grievance challenging a disciplinary action, the 30 calendar day timeframe begins on the date that management presents or delivers the Written Notice to the employee, regardless of whether the employee has been notified in advance that termination is forthcoming.

In the present case, the grievant knew or should have known about his Written Notice with termination on April 11, 2002, the date he received it. Thus, the grievant had thirty calendar days, or until May 11, 2002 to file a grievance. As stated previously, grievant initiated his grievance on May 10, 2002 and, as such, did so timely. The fact that the grievant and the agency engaged in written and verbal communications about a planned termination prior to his actually receiving the Written Notice does not change this result .

CONCLUSION

For the reasons discussed above, this Department has determined that this grievance was filed within the 30 calendar day period and is therefore timely. By copy of this ruling, the grievant and the agency are advised that the grievant has 5 workdays from receipt of this ruling to either conclude the grievance or request to advance to the next resolution step. This Department's rulings on matters of compliance are final and nonappealable.³

Claudia T. Farr
Director

Jennifer S.C. Alger
Employment Relations Consultant

² Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4(1), page 6.

³ Va. Code § 2.2-1001(5).