

Issue: Compliance-multiple grievances; Ruling Date: August 5, 2002; Ruling #2002-132, 2002-134; Agency: Department of Motor Vehicles; Outcome: bonus check grievance may move forward



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Motor Vehicles/ No. 2002-132, 2002-134
August 5, 2002

The grievant filed two grievances on May 8, 2002 with the Department of Motor Vehicles (DMV), one claiming that she was denied access to the grievance process and the other claiming that she received an unacceptable bonus check. The agency administratively closed both of these grievances claiming that they duplicated another grievance filed on July 17, 2001. This Department finds that the grievance concerning the unacceptable bonus check is not duplicative of the July 2001 grievance and may proceed through the management resolution steps. However, the "access" grievance will not proceed through the grievance process for the reasons discussed below.

FACTS

The grievant is employed with a Department of Motor Vehicles (DMV) District Office. Prior to 1999, the grievant had been selected as a Motor Carrier Trainer and was responsible for curriculum development and for conducting training presentations. In 1999, the District Office designated certain employees (not including the grievant) as New Employee Trainers/Technical Trainers. The agency determined that in the future, all training would be combined and coordinated through the designated Technical Trainers. Then, in early 2001, an agency-wide decision was made under DMV's Salary Administrative Plan to grant Technical Trainers a five-percent increase in salary.¹

In April or May 2001, management verbally advised the grievant that she would no longer conduct Motor Carrier training and that the separate Motor Carrier training program would be eliminated. From that point on, the grievant was no longer designated as a trainer, and no longer performed formal presentations and training. She had never

¹ Department of Human Resource 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, 2002). 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."

been designated as a Technical Trainer, and did not receive the pay increase granted to those in the Technical Trainer role.

On July 10, 2001, the grievant discovered that Technical Trainers had received a pay increase and filed a grievance on July 17, 2001, alleging that the agency had unfairly compensated the Technical Trainers and had discriminated against her. Management responded that the grievance was out of compliance and would be closed because it did not directly relate to the grievant's own employment and had not been initiated within 30 calendar days of the event or action giving rise to the grievance. This Department's March 13, 2002 ruling upheld management's decision, finding that the grievance was out of compliance. The grievant alleges that the ruling was erroneous and that she was wrongfully denied access to the hearing process.

On April 16, 2002, DMV issued a bonus check to the grievant for her past work in the Motor Carrier Training program. The grievant claims that this check is unacceptable because it was issued eighteen months after her duties as a trainer ended. Moreover, she claims that this payment demonstrates that the agency has a "guilty conscience" about how they treated her and the other Motor Carrier trainers.

DISCUSSION

The grievances filed on May 8 claim that the grievant was unfairly denied the hearing process and that the April 16 bonus check was unacceptable. The agency claims that the grievances may not advance, because the issues are identical to the issues raised in the July 17, 2001 grievance. The grievances are discussed in turn below.

Denial of Grievance Process

The May 8, 2002 grievance concerning the denial of the hearing process raises the same issues as those previously addressed by this Department in its March 13, 2002 ruling responding to her July 2001 grievance. Although the grievant continues to maintain that DMV was wrong to administratively close her July 2001 grievance, this Department's prior ruling upholding that decision is final and nonappealable.²

In any event, the grievant has not provided additional evidence to demonstrate that the ruling was factually erroneous. Rather, she reiterates her disagreement with the ruling's conclusion as to when she knew of management's decision to reassign the Motor Carrier training responsibilities.³

² Va. Code § 2.2-3003(G).

³ Significantly, one of her May 8 grievances itself states that the April 16, 2002 bonus check was issued 18 months after "the fact that the Motor Carrier trainers [like herself] were treated unequally versus other trainers," which would put the contested treatment (the decision to reassign the grievant's motor carrier training duties) in the year 2000, well beyond the 30 calendar day period preceding her July 2001 grievance.

The ruling dated March 13, 2002 stands.

Unacceptable Bonus Check

DMV alleges that the “unacceptable bonus check” grievance also duplicates the grievance filed on July 17, 2001. The agency action challenged by this May 8 grievance is the issuance of a bonus check on April 16, 2002, which occurred nine months after the filing of the first grievance. Although the two grievances are similar, the later grievance cannot duplicate the earlier one, because the agency action had not yet occurred in July 2001. Therefore, the grievant is in compliance with the grievance procedure, and her claim must be allowed to proceed through the management resolution steps.

CONCLUSION

In conclusion, the May 2002 “denial of hearing process” grievance is duplicative of the July 2001 grievance, and for the reasons set forth above, this Department will not disturb its March 13th ruling in that matter. However, the other grievance filed on May 8, 2002, concerning the April 16 bonus check, does not duplicate the 2001 grievance and thus may proceed through the management steps.

Accordingly, within 5 workdays of receipt of this ruling, the grievant must conclude her “bonus check” grievance or advance it to the second resolution step. This ruling does not make a determination about the merits of this grievance, only that it is in compliance with the grievance procedure. If the grievant is not satisfied with the outcome of the management resolution steps, she may request qualification for a grievance hearing. This Department’s rulings on matters of compliance are final and nonappealable.⁴

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⁴ Va. Code § 2.2-3003(G).