

Issue: Qualification/Work Conditions/Co-worker conflict; Ruling Date: January 9, 2003; Ruling #2002-168; Agency: Virginia Community College System; Outcome: not qualified.



COMMONWEALTH OF VIRGINIA
Department of Employment Dispute Resolution

QUALIFICATION RULING OF DIRECTOR

In the matter of J. Sargeant Reynolds Community College
Ruling No. 2002-168
January 9, 2003

The grievant requested a ruling on whether his July 11, 2002 grievance with J. Sargeant Reynolds Community College (“agency”) qualifies for a hearing. The grievant claims that the “issue of attempted bodily harm” raised in his Grievance Form A has not been addressed at any level of the management resolution steps. For the reasons set forth below, this grievance does not qualify for a hearing.

FACTS

The grievant has been employed by the agency for eight years and is a Trades Technician III. The grievant asserts that upon his arrival at the western campus in June, 2002, he observed that the grass was being mowed too short and that the driver of the mower was an employee that the grievant had been told was not authorized to operate grounds equipment.¹ The grievant paged another Trades Technician III who was in charge while the Grounds Maintenance Supervisor was on vacation. The person in charge told the grievant to stop the employee and tell him to get off the mower. The grievant stepped into the path of the mower and gave the stop signal but had to step to the side when the mower did not stop and the grievant, in a very loud voice, told the employee to stop. After this approach failed, the grievant again stepped in front of the mower on its next pass and used both hands to signal stop. The employee reportedly continued forward and the grievant purportedly had to jump out of the way to avoid being struck. Finally, the Trades Technician III who was in charge arrived from the Parham campus and told the employee to stop and the employee eventually got off the mower.

On July 11, 2002, the grievant filed a grievance claiming attempted bodily harm, interference with job responsibilities, disrespect to coworkers and job duties and loss of time and

¹ See memo from grievant to Director, Facilities Planning and Development dated 6/21/02.

money. The grievant sought as relief “a clear line of authority and job responsibility between grounds and maintenance”, which was granted by the agency during the management resolution steps² and accomplished by an August 23, 2002 email to staff from the Director, Facilities Planning & Development.³ Upon the receipt of the agency head’s qualification denial, the grievant requested qualification by this Department on his claim of attempted bodily harm.

DISCUSSION

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. For example, while grievable through the management resolution steps, claims of co-worker conflict qualify for a hearing only if an employee presents sufficient evidence showing that the challenged actions are based on the protected classes of race, color, religion, political affiliation, age, disability, national origin, or sex.⁴ In addition, claims that management misapplied or unfairly applied policy in dealing with co-worker conflict may also implicate the mandates of DHRM’s Workplace Violence policy,⁵ which could also present a qualifiable issue. However, this is not such a case. No protected classes are involved, and there is insufficient evidence that DHRM’s Workplace Violence policy was misapplied or unfairly applied with respect to the agency’s resolution of this incident.

Indeed, the agency appears to have appropriately addressed the matter in a manner consistent with DHRM policy. Specifically, during the second step response management stated that the agency “supports compliance with the Standards of Conduct and appropriate workforce behavior” and that the employee driving the mower would receive counseling “concerning his behavior on June 20, 2002.”⁶ Management proffered as support a copy of an email clearly citing that a discussion had occurred between the supervisor and the employee and instructing the employee that he was not to operate any grounds equipment at any time without permission.⁷ In light of all the above, this grievance presents insufficient evidence that a hearing is warranted.

APPEAL RIGHTS AND OTHER INFORMATION

For information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. If the grievant wishes to appeal this determination to the circuit court, the grievant should notify the human resources office, in writing, within five workdays of receipt of this ruling. If the court should qualify this grievance, within five workdays of receipt of the court’s

² See Third Resolution Step Attachment.

³ This email outlines who is authorized to use grounds equipment , the process by which authorization can be granted, and that “failure to abide by this policy will result in formal disciplinary action being taken against those who violate it.”

⁴ Va. Code § 2.2-3004 (A)(iii).

⁵ DHRM Policy No. 1.80.

⁶ See Second Resolution Step Response.

⁷ See email from Director, Facilities and Planning to employee dated June 24, 2002 10:33 AM.

decision, the agency will request the appointment of a hearing officer unless the grievant wishes to conclude the grievance and notifies the agency of that decision.

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Director

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