

Issue: Compliance/Other; Ruling Date: February 5, 2003; Ruling #2002-224; Agency: Department of Motor Vehicles; Outcome: Grievant in compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Motor Vehicles
No. 2002-224
February 5, 2003

The grievant has requested a compliance ruling in her grievance initiated with the Department of Motor Vehicles (DMV or the agency) on October 26, 2002 regarding her supervisor's alleged improper computer use and alleged retaliatory actions toward her. The agency contends that the grievance should be administratively closed because: (1) the grievance does not pertain directly and personally to the grievant's own employment; and (2) a grievance cannot be used to impede the efficient operations of government. For the reasons discussed below, this Department concludes that the grievance complies with the grievance procedure.

FACTS

The grievant is employed in a management capacity at DMV. On April 15, 2001, the grievant wrote a letter to the agency Commissioner detailing her frustrations with her supervisor's management style. Subsequently, allegedly at her supervisor's urging, the grievant took leave from work from September 24, 2002 through September 27, 2002. The grievant maintains that when she returned to work, she attempted to log onto the computer in her office and discovered that her supervisor had logged onto the computer while she was away. The grievant maintains that her supervisor's alleged unauthorized computer use violates state law and is retaliatory in nature.

DISCUSSION

As a matter of compliance with the grievance procedure, a grievance must pertain "directly and personally to the grievant's own employment."¹ The agency contends that the supervisor's computer use does not pertain directly and personally to the grievant's employment and therefore is not a "grievable" issue.² In her grievance, however, the

¹ See *Grievance Procedure Manual* § 2.4, page 6.

² It should be noted that with a few compliance-related exceptions, all issues are "grievable" through the management resolution steps of the grievance procedure. A grievance, however, can be administratively closed due to noncompliance. Initiating a grievance that does not pertain directly and personally to a grievant's own employment is an issue of noncompliance. See *Grievance Procedure Manual*, § 2.4, page 6-7.

grievant alleges that her supervisor logged onto a computer that is primarily used by the grievant, and as such, could easily access the grievant's files and potentially destroy them. Additionally, the grievant claims that her supervisor used the computer in retaliation for her letter to the Commissioner concerning her supervisor's management style.³ These allegations pertain directly and personally to the grievant's own employment.

The agency also asserts that this grievance is intended to impede the efficient operations of government, and that it potentially impairs the supervisor's ability to effectively carry out her responsibilities. In support, the agency contends that if the grievant's supervisor were not able to log onto various computers as needed, her ability to carry out her duties as District Manager would be impeded.

The Commonwealth's policy "as an employer, [is] to encourage the resolution of employee problems and complaints."⁴ To that end, the General Assembly has determined that "the grievance procedure shall afford an immediate and fair method for the resolution of employment disputes that may arise between state agencies and those employees who have access to the procedure."⁵ However, "[e]mployees' rights to pursue grievances shall not be *used to harass or otherwise impede* the efficient operations of government."⁶ Accordingly, an employee who uses her grievance or grievances to harass or impede the operations of an agency is out of compliance with the grievance procedure.⁷

The grievance procedure's prohibition on using the grievance process to harass or otherwise impede the efficient operations of government is primarily intended to allow an agency to challenge issues such as the number, timing, or frivolous nature of the grievances, and the related burden to the agency. Moreover, the mere filing of a grievance does not serve as an injunction thereby preventing an agency or its employees from carrying out its governmental functions and operations. The mere fact that the grievant has initiated a grievance does not, by itself, preclude the District Manager from logging on the grievant's or any other employee's computer.⁸ In this case, the grievant has initiated a single grievance that challenges alleged unauthorized and retaliatory actions of her supervisor. Under these facts, this Department cannot conclude that the grievant used the grievance procedure to impede the efficient operations of DMV.

³ The grievant's claim that her supervisor could be accessing and destroying the grievant's files was not specifically mentioned on her Grievance Form A, but was raised in an attachment thereto at the time of initiation. This Department has long held that issues contained in any attachments to Grievance Form A at the time of initiation shall be viewed as part of the grievance. Additionally, on Form A and in the attachment thereto, the grievant indicates that retaliation by her supervisor is also at issue.

⁴ Va. Code § 2.2-3000(A).

⁵ *Id.*

⁶ Va. Code § 2.2-3003(C)(emphasis added).

⁷ *Grievance Procedure Manual* § 2.4, pages 6-7.

⁸ This Department offers no opinion as to the merits of the grievant's claims regarding the lawfulness of her supervisor's logging onto her computer.

CONCLUSION

For the reasons discussed above, this Department has determined that this grievance does pertain directly and personally to the grievant's employment and was not initiated to impede the efficient operations of government. This compliance ruling in no way determines the merits of the grievance, only that the grievance complies with the grievance procedure's requirements for initiation. 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.⁹

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⁹ Va. Code § 2.2-1001(5).