

Issue: Qualification/Separation/Layoff/Recall; Ruling date: June 23, 2003; Ruling #2003-048; Agency: Department of Corrections; Outcome: not qualified



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Corrections/ No. 2003-048  
June 23, 2003

The grievant has requested a ruling on whether his December 16, 2002 grievance with the Department of Corrections (DOC or agency) qualifies for a hearing. The grievant claims that DOC's application of the Layoff Policy for an indefinite period of time is a misapplication of policy. Specifically, he claims that he was no longer on layoff status when he entered into a Tenure Agreement with the former DOC Director. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

The grievant is employed by DOC as a Corrections Major. On April 16, 2002, the grievant received a Notice of Layoff or Placement that offered him placement at facility #2 due to the closure of facility #1 where he had been working.<sup>1</sup> On April 21, 2002, the grievant accepted the placement at facility #2 and began work at that facility on June 10, 2002.<sup>2</sup>

On July 1, 2002, after a discussion with the Warden at facility #2 regarding the grievant's responsibilities as an Administrative Duty Officer, it was decided that the grievant could best fulfill his duties by living locally full-time.<sup>3</sup> At that time, the grievant's primary residence was significantly greater than 20 miles away from facility #2 and he was staying in facility housing during his shifts. That same day, the grievant submitted a Tenure Agreement to the DOC Director with the understanding that the grievant would sell his primary residence and relocate if DOC would reimburse him for his moving expenses.<sup>4</sup> On July 18, 2003, the Director signed the Tenure Agreement.<sup>5</sup> The grievant placed his primary residence on the market and sold it on September 10, 2002. On September 16, 2002, the grievant submitted the required paperwork for reimbursement of his moving expenses.

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<sup>1</sup> See Notice of Layoff or Placement dated 4/16/02.

<sup>2</sup> *Id.* See also Attachment to Form A dated December 16, 2002.

<sup>3</sup> *Id.* Attachment to Form A dated December 16, 2002. See also DOC Procedure Number 9-24 Staff Housing, BOQs and Trailers dated June 1, 1999, which states that "essential personnel will be readily available at all times in the event of an emergency situation." 9-24.6.

<sup>4</sup> See Employment Tenure Agreement signed by the grievant and the DOC Director.

<sup>5</sup> *Id.*

On October 4, 2002, the grievant received a telephone call from a staff member informing him that his reimbursement request had been denied and that the Director with whom he had the agreement had left the agency.<sup>6</sup> On October 9, 2002, the grievant sent an email to the staff member confirming the telephone conversation and she replied that he should contact the agency's Human Resource Director (HRD).<sup>7</sup> The grievant received an email that same day from the HRD stating that he was unaware of the situation until recently and would look into the matter.<sup>8</sup> On November 22, 2002 the HRD advised the grievant that the Tenure Agreement with the former Director could not be honored as it violated the state's layoff policy.<sup>9</sup>

The grievant initiated his grievance on December 16, 2002, claiming that DOC violated policy by applying the Layoff Policy indefinitely, in that the Tenure Agreement had been signed by the DOC Director after the grievant had been working at facility #2 for some weeks. Management's response was that "[t]he Director of the Department of Corrections does not have the authority to take action not in accordance with state policy. It is a Tenure Agreement that should not have been signed."<sup>10</sup> The grievant claims that even if the former Director erred, the grievant based his actions on the Tenure Agreement and the agency, not he, should bear the cost of his moving expenses.

#### DISCUSSION

For a claim of misapplication or unfair application of policy to qualify for a hearing, there must be facts that raise a sufficient question as to whether management violated a mandatory policy provision, or whether the challenged action, in its totality, was so unfair as to amount to a disregard of the intent of the applicable policy. Several policies are at issue here. One is the Department of Human Resources Management (DHRM) Policy No. 1.30 Layoff.<sup>11</sup> DOC also has its own layoff policy, Reductions in Work Force Procedure 5-39.<sup>12</sup> Although both DHRM Policy 1.30 and DOC Procedure 5-39 reference relocation, neither specifically states that relocation accompanying a layoff is not reimbursable. However, DOC's Moving and Relocation Expenses Procedure 6-20 clearly states that "[m]oving and relocation expenses shall not be reimbursed by the Department when: [e]mployees relocate as a result of the State Policy and Department procedure regarding layoffs and terminations."<sup>13</sup>

It is undisputed that the grievant was notified and accepted placement at facility #2 due to the closure of facility #1.<sup>14</sup> Therefore, while the grievant's disappointment

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<sup>6</sup> See Attachment to Form A dated December 16, 2002.

<sup>7</sup> See also email correspondence from grievant to staff member regarding telephone conversation dated October 9, 2002.

<sup>8</sup> See email from HRD dated October 9, 2002.

<sup>9</sup> See email from HRD dated November 24, 2002 with attached Memorandum dated November 21, 2002.

<sup>10</sup> See First Step Response signed by the Human Resource Director December 20, 2002.

<sup>11</sup> DHRM Policy No. 1.30, effective September 25, 2000, revised August 10, 2002.

<sup>12</sup> See DOC Procedure Number 5-39 issued March 15, 2001.

<sup>13</sup> See DOC Procedure Number 6-20, 6-20.9 (D) dated April 17, 1998, page 4 of 8.

<sup>14</sup> See Notice of Layoff or Placement dated 4/16/02.

with DOC's error and the way in which it was handled is clearly understandable, DOC properly applied its Moving and Relocation Expenses Procedure 5-39 by refusing to reimburse the grievant for moving expenses that resulted from his acceptance of a relocation to facility #2. Furthermore, while it appears that the agency violated its own policy by entering into an agreement to reimburse the grievant for his moving expenses, it would have been a further misapplication of policy to allow the Tenure Agreement to stand, thus allowing one employee to benefit over others due to a correctable management error. DOC's action in refusing to reimburse the grievant's moving expenses did not violate a mandatory policy provision nor was it so unfair as to amount to a disregard of the intent of the applicable policy.<sup>15</sup> Further, while this grievance claims that the grievant was not subject to the Layoff Policy when the Tenure Agreement was signed, we disagree. The grievant's relocation was caused by the application of layoff policies, and the Tenure Agreement was signed only some twenty days following his relocation. To the extent the grievant is alleging a breach of contract, such a claim is not among the issues identified by the General Assembly that may qualify for a grievance hearing,<sup>16</sup> and is not appropriate for adjudication by a hearing officer.

#### 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, he 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 decision, the agency will request the appointment of a hearing officer unless the grievant notifies the agency that he does not wish to proceed.

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Claudia T. Farr  
Director

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Deborah M. Amatulli  
EDR Consultant, Sr.

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<sup>15</sup> While the refusal to pay the grievant for the moving expenses he incurred may appear "unfair," such issues are more appropriately viewed as potential contractual matters rather than policy matters. State and agency policy set forth procedures relating to who can be reimbursed and under what circumstances. When promises made pursuant to such policies are not kept, DHRM, the state agency charged by statute with the promulgation and interpretation of personnel policy, has informally opined during the investigation for this ruling that while such actions may constitute poor business practices, they do not constitute a misapplication of policy.

<sup>16</sup> See Va. Code § 2.2-3004(A).