

Issue: Compliance/30-day rule; Ruling Date: October 3, 2003; Ruling #2003-128;
Agency: Department of Transportation; Outcome: grievances filed timely.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Virginia Department of Transportation
No. 2003-128
October 3, 2003

The grievant has requested a compliance ruling in his grievance dated June 25, 2003 with the Virginia Department of Transportation (VDOT or the agency). The agency administratively closed the grievance, claiming the grievant failed to initiate the grievance within the required 30 calendar day period. For the reasons set forth below, this Department concludes that the grievance was timely filed.

FACTS

The grievant is an African American male and is employed as a Bridge Tunnel Patrol Supervisor with a VDOT facility. In April 2003, a Caucasian female employee supervised by the grievant accused him of discrimination. On May 5, 2003, the agency initiated an investigation and several employees were interviewed concerning the allegations.

On June 25, 2003, the grievant filed a grievance, claiming that he was subjected to racial discrimination and harassment by management and other agency personnel. He asserts the investigation was "unjustifiable, tormenting and humiliating" and an attempt to deprive him of his position based upon his race.¹ In part, the grievant bases this claim on the fact that, while all witnesses were allegedly interviewed by May 15, 2003, the agency had not issued a report at the time he initiated his grievance. Additionally, because a date is required on the grievance form regarding when the challenged event(s) occurred, he stated the grievance began on May 5, 2003 (the start of the investigation) and was continuing because the investigation had not concluded.²

In response to the grievant's claims, the first step respondent asserts that the grievance is not timely filed because the grievant had 30 calendar days from the date of the occurrence (May 5th) to file a grievance, which would have been June 5th. On the other hand, the grievant claims that the investigation was ongoing at the time he

¹ See Grievance Form A, Section I, dated June 25, 2003.

² The agency did not conclude the investigation and inform the grievant that the allegations had been determined to be unfounded until July 7, 2003.

initiated his grievance, and, thus, his grievance is timely. Consequently, the grievant seeks a compliance ruling from this Department.

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.³ 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.

In this case, the “event or action” challenged by the grievant is the alleged discriminatory and harassing nature of the ongoing investigation itself, that is, the purportedly excessive length of time the agency took to complete its investigation, rather than simply management’s initial commencement of the investigation on May 5th. It is undisputed that the agency’s investigation into the allegations made against the grievant was ongoing at the time of the initiation of his grievance on June 25, 2003. Thus, because he challenged the nature of the ongoing investigation while it was pending, it cannot be said that his grievance was untimely. Thus, the grievance may proceed through the grievance process as a claim for which relief may be granted.⁴

The parties should note that this ruling on compliance has no bearing on the substantive merits of this grievance or its qualification for hearing.

CONCLUSION

The parties are advised that the grievant’s claim regarding the alleged excessive length and nature of the investigation is timely and may proceed through the grievance process. By copy of this ruling, the grievant and the agency are advised that the grievant has five workdays from receipt of this letter to either conclude this grievance or request to advance to the next resolution step. This Department’s rulings on matters of compliance are final and nonappealable.⁵

Claudia T. Farr
Director

³ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4(1), page 6.

⁴ To the extent that grievant was attempting to challenge the agency’s decision to initiate the investigation, that issue is not timely because the grievance was not instituted within 30 days of the commencement of the investigation.

⁵ See Va. Code § 2.2-1001(5).

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