

Issue: Compliance/30-day rule; Ruling Date: December 5, 2003; Ruling #2003-469;
Agency: Dabney Lancaster Community College; Outcome: grievance untimely-
administratively closed.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Dabney S. Lancaster Community College
Ruling Number 2003-469
December 05, 2003

The grievant has requested a compliance ruling in her October 21, 2003 grievance with Dabney S. Lancaster Community College (DLCC or the agency). The agency asserts that the grievant did not initiate her grievance within the 30-calendar day time period required by the grievance procedure. For the reasons discussed below, this grievance is untimely and may be administratively closed.

FACTS

The grievant is employed as an Information Technology Specialist with DLCC. On September 18, 2003 the grievant received a Group II Written Notice for accessing and disclosing confidential information and requesting that subordinates engage in activities "that jeopardized their position[s] and future employment with the College." In addition, the grievant was suspended without pay for 20-workdays beginning on September 19, 2003 and ending on October 16, 2003. The grievant was scheduled to return to work, and did so, on October 17, 2003. On October 21, 2003, the grievant initiated the grievance that is the subject of this ruling. On or about October 22, 2003, the agency informed the grievant that it would not process her grievance because it had been initiated beyond the required 30-day timeframe.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date she knew or should have known of the event or action that is the basis of the grievance.¹ 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 that forms the basis of the grievance is the agency's issuance of a Group II Written Notice to the grievant. This Department has long held that

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

in a grievance challenging a disciplinary action, the 30 calendar day timeframe begins on the date that management presents or delivers the Written Notice to the employee.² The grievant received the Group II Notice on September 18, 2003 and thus should have initiated her grievance within thirty days of September 18, 2003, or by October 18, 2003. The grievant did not initiate her grievance until October 21, 2003, which was untimely. Thus, the only remaining issue is whether there was just cause for the delay.

The grievant claims that she did not initiate her grievance until October 18th for a variety of reasons. First, she claims that she was given an outdated grievance manual that was printed in 1995. However, the 30-day grievance initiation requirement has been a long-standing rule that has been in effect since 1995 and earlier. The fact that the agency did not give the grievant the most recent version of the *Grievance Procedure Manual* did not prejudice the grievant because the 30-day rule in existence today is the same that was in effect in 1995. Moreover, the grievant's Group II Written Notice expressly stated that "[i]f you wish to appeal this corrective action, you may do so under the provisions of the Employee Grievance Procedure *within 30 calendar days of your receipt of this Written Notice.*" Thus, despite any alleged uncertainties that the grievant may have harbored about the grievance process, she had clear notice that she was required to initiate her grievance within 30 calendar days of receipt of the Written Notice.³

The grievant also claims that she did not have access to the campus during her suspension and that upon her October 17th return to work, she was unsuccessful in contacting the Human Resources Department. Neither of these factors can be viewed as just cause excusing the grievant's failure to timely initiate her grievance. The Group II Written Notice presented to the grievant expressly informed her that she had to initiate her grievance within 30 calendar days *and* that if she had any questions regarding the grievance procedure that she could contact *either* "[her] Human Resource Officer *or* the Department of Employment Dispute Resolution."⁴ The Written Notice Form also provides a toll-free phone number and e-mail address that the grievant could have used from her home to contact this Department to obtain information, forms, and publications.⁵

Finally, the grievant contends that only after she returned to work did she discover the alleged "unfairness" of her discipline. However, this Department has held that the 30 calendar day rule is triggered by the grievant's knowledge of the "event or action" directly affecting the grievant's employment, not by the grievant's knowledge of the alleged *impropriety* of that "event or action."⁶ In this case, the event directly and

² See EDR Rulings 2000-003; 2000-082; 2002-001; 2002-118; 2003-147.

³ Written Notice, dated and signed by the grievant on September 18, 2003.

⁴ Id.

⁵ Id.

⁶ See, e.g., EDR Ruling 2003-126; compare *Hamilton v. 1st Source Bank*, 928 F. 2d 86, 88-89 (4th Cir. 1990) (court noting that the statutory trigger date in Title VII discriminatory discharge cases is the date of the employee's notice of the employer's "act" (the discharge), not the employee's notice of the employer's discriminatory motivation behind the act). See also EDR Ruling 2003-422.

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personally affecting the grievant's employment occurred on September 18, 2003, when she received the Written Notice, not when she discovered that another employee may have been treated more favorably in an allegedly similar situation.

CONCLUSION

For the reasons discussed above, this Department has determined that this grievance was not filed within the 30-calendar day period and is therefore untimely. By copy of this ruling, the grievant and the agency are advised that the agency may administratively close this grievance. This Department's rulings on matters of compliance are final and nonappealable.⁷

Claudia T. Farr
Director

William G. Anderson, Jr.
EDR Consultant, Sr.

⁷ Va. Code § 2.2-1001(5).