

Issue: Compliance/agency requests consolidation of grievances for the purposes of hearing; Ruling Date: September 22, 2004; Ruling #2004-874 Agency: Department of Transportation; Outcome: grievances consolidate for the purposes of hearing



COMMONWEALTH of VIRGINIA

Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Transportation
Ruling Number 2004-874
September 22, 2004

The agency has requested a compliance ruling regarding two grievances initiated by the grievant on June 8, 2004. The agency requests that the two grievances be consolidated for a single hearing, to which the grievant agrees. For the reasons discussed below, the two grievances are consolidated and will proceed to a single hearing.

FACTS

The grievant was employed as a Program Manager. On May 10, 2004, he was issued two Group II Written Notices. The first of these notices was for using agency internet resources to access personal web-based e-mail, in violation of agency policy and his supervisor's instructions. The second notice was for failing to report to work on April 26, 2004 and failing to call in. On June 8, 2004, the grievant initiated grievances challenging each of these disciplinary actions. The grievances were unresolved during the respondent steps and were qualified for hearing on August 31, 2004. The agency has requested that the two grievances be consolidated for a single hearing, and the grievant has agreed to this request.

DISCUSSION

Written approval by the Director of this Department or her designee in the form of a compliance ruling is required before two or more grievances are permitted to be consolidated in a single hearing. EDR strongly favors consolidation and will grant consolidation when grievances involve the same parties, legal issues, policies, and/or factual background, unless there is a persuasive reason to process the grievances individually.¹

While the Group Notices being grieved are distinct disciplinary actions issued for separate offenses, this Department finds that consolidation of the two grievances is

¹ Grievance Procedure Manual § 8.5.

nevertheless appropriate. Both grievances involve the same parties, both parties have requested consolidation and, most importantly, consolidation is not impracticable. For these reasons, the two grievances are consolidated for a single hearing.² This Department's rulings on compliance are final and nonappealable.³

Claudia T. Farr
Director

² It should be noted that consolidation of multiple grievances challenging separate disciplinary actions that are based on unrelated circumstances is a departure from this Department's past practice. However, where *both* parties have requested consolidation, the potential for prejudice to either is presumably minimized. For that reason, and in the interest of judicial economy and the economic interests of the parties, this Department *generally* will consolidate such grievances if *both* parties request consolidation *and* this Department does not find consolidation impracticable. *Compare* Switzenbaum v. Orbital Sciences Corp., 187 F.R.D. 246 (E.D. Va. 1999), discussing Rule 42(a) of the Federal Rules of Civil Procedure, which permits the consolidation of actions that pose common questions of law and fact. In that case, the court concluded that "[j]udicial economy generally favors consolidation, but the court must conduct a careful inquiry in this regard that balances the prejudice and confusion that consolidation might entail against the waste of resources, the burden on the parties, and the risk of inconsistent judgments that separate proceedings could engender." Switzenbaum at 247-248. Likewise, the primary objective of this Department is to ensure that both parties are ensured a full and fair opportunity to present their cases through a well-administered hearing process. Therefore, as is the case with all compliance matters, this Department shall make the final determination as to whether consolidation is practicable and appropriate.

³ Va. Code § 2.2-1001 (5).