

Issue: Compliance/30 day rule, discipline/Group II; Ruling Date: February 10, 2005;  
Ruling #2005-941; Agency: Virginia Department of Transportation; Outcome:  
grievance out of compliance



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*  
**COMPLIANCE RULING OF DIRECTOR**

In the matter of Department of Transportation  
Ruling Number 2005-941  
February 10, 2005

The grievant has requested a compliance ruling in his December 21, 2004 grievance with the Department of Transportation (VDOT or the agency). The agency asserts that the grievant did not initiate his grievance within the 30-calendar day time period required by the grievance procedure. For the reasons discussed below, this grievance is untimely without just cause and may be administratively closed.

FACTS

The grievant is employed as a Transportation Operator II. On November 2, 2004, the grievant was issued a Group II Written Notice with suspension for failure to comply with written instructions. On December 21, 2004, he initiated a grievance to challenge the disciplinary action. In conjunction with the initiation of his grievance, the grievant submitted a request to his immediate supervisor and the second-step respondent asking for an extension of the five workday time period due to planned annual leave during the Christmas holiday season. The grievant's request was approved by the first-step respondent. The second-step respondent disapproved the request for extension, and further alleged that the grievant was out of compliance with the grievance procedure for failure to initiate his grievance within the mandated 30-calendar day time period.

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.<sup>1</sup> 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.

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<sup>1</sup> Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4 (1).

In this case, the event that forms the basis of the grievance is the grievant's receipt of the Group II Written Notice. The grievant acknowledged receipt of the Written Notice on November 2, 2004; therefore, he should have initiated his grievance within thirty days of that date. The grievant did not initiate his grievance until December 21, 2004, which was untimely. Thus, the only remaining issue is whether there was just cause for the delay.

The grievant contends that by issuing the Group II Written Notice, the agency treated him differently than it treated another similarly situated employee on December 2, 2004, and thus the 30 day timeline to challenge his Group II Written Notice should begin on December 2, not November 2. 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 (e.g. his Written Notice), not by the grievant's discovery of evidence that the "event or action" (his Written Notice) may have been unfair or improper.<sup>2</sup> In this case, the event that directly and personally affected the grievant's employment occurred on November 2, 2004, when he received the Written Notice, not when he later 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.<sup>3</sup>

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Claudia T. Farr  
Director

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June M. Foy  
EDR Consultant, Sr.

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<sup>2</sup> See EDR Ruling #2004-881.

<sup>3</sup> Va. Code § 2.2-1001 (5).