

Issue: Compliance/30-day rule/other grievance procedure issue; Ruling Date: August 25, 2005; Ruling #2006-1095; Agency: George Mason University; Outcome: grievant is in compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of George Mason University
Ruling Number 2006-1095
August 25, 2005

The grievant has requested a compliance ruling in his June 17, 2005 grievance with George Mason University (GMU or the University). The University asserts that (1) the grievant did not initiate his grievance within the 30-calendar day time period required by the grievance procedure; and (2) the June 17th grievance is an attempt to add new claims to his earlier May 18, 2005 grievance. For the reasons discussed below, this Department finds the grievant has complied with the grievance procedure.

FACTS

Prior to his reassignment/demotion to Classroom Technology Specialist,¹ the grievant was employed as a manager with GMU. On April 19, 2005, the grievant was issued a Group I Written Notice for “[i]nappropriate supervisory conduct, unsatisfactory job performance, and failure to accept guidance concerning performance issues.” On May 18, 2005, the grievant initiated a grievance challenging the Group I Written Notice as procedurally improper as well as “inaccurate, misleading and unfair.” In addition, the May 18th grievance alleges discrimination on the basis of age, religion/national origin and family status.

Additionally, GMU claims that it informed the grievant on May 10, 2005 that his duties were going to change and that he would be taking on a newly created position. The grievant on the other hand asserts that at the May 10th meeting he was told of “the possibility of a new position” for him and it was not until May 18, 2005 that he was informed that the transfer was mandatory and considered a lateral move rather than a

¹ In his June 17, 2005 grievance, the grievant claims that he was demoted when he was transferred from a management position to Classroom Technology Specialist. The University, on the other hand, appears to view the grievant’s move as a reassignment of duties rather than a demotion. Because this is a compliance ruling and the merits of the June 17th grievance are not at issue, for purposes of this ruling only, the grievant’s move will be termed a reassignment/demotion.

demotion. The University further avers that it was agreed upon at a May 24, 2005 meeting that the official transfer of duties would take place on June 6, 2005.²

On June 17, 2005, the grievant initiated a grievance challenging the reassignment/demotion as discriminatory and retaliatory. GMU subsequently administratively closed the June 17th grievance for noncompliance with the 30 calendar day requirement of the grievance procedure. Specifically, the University asserts that the grievant had 30 calendar days from May 10, 2005, the date the grievant was allegedly informed of his new duties and position, to initiate his grievance challenging the reassignment/demotion. The grievant claims, however that he had 30 calendar days from May 18, 2005, the day he was allegedly told that the reassignment/demotion was mandatory and lateral, to challenge the reassignment/demotion.

The University further seeks to administratively close the June 17, 2005 grievance on the basis that it adds new claims to the earlier May 18, 2005 grievance, an act impermissible under the grievance procedure. The grievant refutes GMU's claim by stating that because the grievance procedure prohibits the grievant from adding new claims to his May 18th grievance he had to initiate the June 17th grievance to challenge the new management action (i.e. the reassignment/demotion). Further, the grievant asserts that the University cannot take action against the grievant after the filing of the May 18th grievance and then deny the grievant the ability to amend his earlier grievance as well as his right to file a new grievance "even if the two incidents are part of a connected stream of improper management by the University."

DISCUSSION

30 Calendar Days

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.

While it may be accurate that the grievant was informed on May 10th of the agency's intention to reassign/demote him to another position, the *event* forming the basis of the grievance is the actual reassignment/demotion, not the notice that such an action

² Prior to the official transfer of duties, the grievant allegedly requested an unspecified amount of annual leave. It was allegedly agreed that the grievant would request the leave he desired, focus his work on "creating a smooth transition until he went on annual leave" and that he would assume his new duties upon his return from annual leave. Thereafter, on June 17, 2005, the grievant allegedly informed the University that he would be going on short-term disability (STD) on June 20th. According to GMU, the grievant is allegedly scheduled to assume his new duties upon his return to work on August 22, 2005.

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

would likely occur.⁴ The grievant was supposed to assume his new duties on June 6, 2005. Thus, he had 30 days from that date to initiate a grievance challenging his reassignment/demotion. Because he initiated his grievance on June 17, 2004, the challenge to the reassignment/demotion is timely.

Adding New Claims

Under the grievance procedure, “[o]nce the grievance is initiated, additional claims may not be added.”⁵ In an attachment to Form A of the grievant’s June 17, 2005 grievance, the grievant states: “[t]his action grieved is a continuation of the matter set forth in my Grievance dated May 18, 2005. As a continuation of those actions I grieved in that grievance, and in retaliation for my continued opposition to this conduct by management, I was demoted on or about May 18, 2005.” The University interprets the language set forth in the June 17th grievance to mean that the grievant is adding new claims to his May 18, 2005 grievance.

As stated above, the grievant’s May 18, 2005 challenges a Group I Written Notice. The grievant’s June 17, 2005 grievance on the other hand challenges the grievant’s subsequent reassignment/demotion. As such, the June 17th grievance is challenging a different management action than the May 18th grievance. Therefore, it was appropriate (and required under the grievance procedure) for the grievant to challenge the reassignment/demotion by initiating a separate grievance because once the grievant initiated his May 18th grievance, new claims could not be added to that grievance. Moreover, by stating that the “action grieved is a continuation of the matter set forth in my Grievance dated May 18, 2005,” it appears that the grievant is not trying to add new issues to his May 18, 2005 grievance, but is merely claiming that this new management action (i.e., the reassignment/demotion) is further evidence of management’s alleged discriminatory conduct described in the May 18th grievance. Accordingly, although the May 18th and June 17th grievances share a common claim of discrimination, the grievances challenge different management actions and the June 17, 2005 grievance is not an attempt to add new claims to the May 18th grievance.

CONCLUSION

The grievance dated June 17, 2005 was filed within the 30-calendar day period and is therefore timely. Additionally, the June 17th grievance is not an attempt to add new claims to an existing grievance, but rather is a separate grievance challenging a different management action (i.e., the reassignment/demotion). Accordingly, by copy of this ruling, the grievant and the University are advised that the grievant has five workdays from receipt of this ruling either to conclude the grievance or request to

⁴ This is consistent with previous EDR compliance rulings. See EDR Ruling #2004-784 and 2003-413.

⁵ *Grievance Procedure Manual* § 2.4.

advance to the next resolution step. This Department's rulings on matters of compliance are final and nonappealable.⁶

Claudia T. Farr
Director

Jennifer S.C. Alger
EDR Consultant

⁶ See Va. Code § 2.2-1001(5).