

Issue: Consolidation/consolidation request to hear two grievants' grievances at one hearing;  
Ruling Date: May 10, 2006; Ruling #2006-1346, 2006-1347; Agency: Department of  
Transportation; Outcome: consolidation granted.



*COMMONWEALTH of VIRGINIA*

*Department of Employment Dispute Resolution*  
**CONSOLIDATION RULING OF DIRECTOR**

In the matter of Department of Transportation  
Ruling Numbers 2006-1346 and 2006-1347  
May 10, 2006

Two grievants (Grievant #1 and Grievant #2) seek a consolidation ruling regarding separate grievances they each initiated on March 16, 2006. The employees requests that their two grievances be consolidated for a single hearing, to which the Department of Transportation (VDOT or the agency) agrees. For the reasons discussed below, this Department finds that consolidation is appropriate and practicable in this case.

FACTS

On March 16, 2006, Grievant #1 was issued a Group III Written Notice with termination for workplace violence.<sup>1</sup> On the same date, Grievant #2 was issued a Group II Written Notice with termination for leaving the worksite on March 9<sup>th</sup>, along with Grievant #1, without permission.<sup>2</sup> The two grievants challenged their discipline by initiating separate grievances on March 16, 2006. The two grievances were unresolved during the management respondent steps, and on April 20, 2006 were qualified for hearing by the agency head.

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.<sup>3</sup>

Likewise, in the interest of judicial economy, courts generally favor consolidation of actions that pose common questions of law or fact.<sup>4</sup> However, before granting consolidation,

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<sup>1</sup> Grievant #1 had been involved in an incident on March 9, 2006, in which he allegedly left the worksite without permission. The grievant allegedly verbally threatened and intimidated another employee who reported the incident to his supervisor.

<sup>2</sup> Grievant #2 already had an active Group II Written Notice in the record for the same offense, and therefore, was terminated for an accumulation of disciplinary action.

<sup>3</sup> *Grievance Procedure Manual*, § 8.5.

<sup>4</sup> See *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.

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 risk of inconsistent judgments that separate proceedings could engender”<sup>5</sup> Similarly, the Virginia rules of criminal procedure favor a joint trial of defendants charged with participating in contemporaneous and related acts or occurrences unless a joint trial would constitute prejudice.<sup>6</sup>

In such cases, the defendant must show actual prejudice, which results only when “there is a serious risk that a joint trial would compromise a specific trial right or prevent the jury from making a reliable judgment about guilt or innocence.”<sup>7</sup> As such, it appears that in assessing whether a case is appropriate for consolidation or a joint trial, Virginia Courts rely heavily upon to what extent prejudice could result if consolidation or a joint trial is granted. While not dispositive for purposes of the grievance procedure, the prejudice standard articulated by the Virginia Courts under the civil and criminal procedural rules is nevertheless instructive in determining whether consolidation is appropriate for purposes of a grievance hearing.

In this case, the grievants seek consolidation of the two grievances for hearing because the underlying issue in both their grievances is the same- that they jointly left the worksite on March 9, 2006, without the permission of their supervisor. Additionally, the grievants believe that since they are both represented by the same attorney, consolidation would help reduce legal costs. Finally, the risk of prejudice would appear to be minimal at best, given that all parties agree to consolidation.

This Department finds that consolidation of the two grievances is appropriate. The two grievances involve the same parties and many of the same potential witnesses, and share a common factual background. Furthermore, consolidation is not impracticable in this instance. This Department’s rulings on compliance are final and nonappealable.<sup>8</sup>

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Claudia T. Farr  
Director

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<sup>5</sup> *Id.* At 247-248 *citing* Arnold V. Eastern Airlines, 681 F.2d 186, 193 (4<sup>th</sup> Cir. 1982).

<sup>6</sup> *See* Va. Code § 19.2-262.1.

<sup>7</sup> Barnes V. Judge Commonwealth of Virginia, 22 Va. App. 406, 470 S.E. 2d 579 (1996) *citing* Zafiro V. United States, 506 U. S. 534, 539, 113 S. Ct. 933 938, 122 L. Ed. 2d 317 (1993).

<sup>8</sup> Va. Code § 2.2-1001 (5).