

Issue: Compliance – Grievance Procedure (30 Day Rule); Ruling Date: August 8, 2007; Ruling #2008-1739; Agency: Virginia Department of Transportation; Outcome: Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF THE DIRECTOR

In the matter of Department of Transportation
No. 2008-1739
August 8, 2007

The grievant has requested a ruling on whether her June 18, 2007¹ grievance with the Department of Transportation (the agency) is in compliance with the grievance procedure. The agency asserts that the grievance does not comply with the grievance procedure because the grievant did not initiate it timely. For the reasons set forth below, the grievance is untimely and may be administratively closed.

FACTS

On March 20, 2007, the grievant attended an awards ceremony at which she received an award for community service work she had performed. The grievant sought to utilize volunteer service leave² for sixteen work hours she was absent during this period. The agency did not permit her to utilize volunteer service leave to travel to and attend the awards ceremony. On June 18, 2007, the grievant initiated this grievance to be reimbursed for these two days for which she took leave without pay, and be allowed to use her volunteer service leave to cover the absences.³

The exact date the grievant was informed of the agency's decision is somewhat unclear. The agency maintains that the grievant was told in November 2006 she could not use volunteer service leave for the awards ceremony. However, it does not appear that the grievant even learned about the awards ceremony until March 5, 2007. An undated, handwritten note from the

¹ The handwritten date on the Grievance Form A appears to be June 18, 2007. In addition, the grievance appears to be marked as received by the agency's date stamp on June 18, 2007. However, because the handwriting is somewhat unclear on the Grievance Form A, it is possible that the date the grievance was signed was June 15, 2007. For purposes of this ruling, it will be assumed that the grievance was initiated on June 18, 2007. In any event, the difference of three days will not affect the outcome of this ruling.

² See DHRM Policy 4.40, *School Assistance and Volunteer Service Leave*.

³ The grievant included additional information on her Form A and attachments, including events taking place in November 2006, and a Written Notice received on May 17, 2007. According to the agency, the grievant has received three Written Notices, including the one identified on her Grievance Form A. However, that disciplinary action is reportedly the subject of a separate grievance. As to the events that took place in November 2006, because, as discussed below, the claim regarding grievant's denial of leave, which appears to have occurred after November 2006, is untimely, so to is such a claim related to matters in November 2006.

Human Resources Manager indicates that the awards ceremony would not qualify for volunteer service leave. While this note has no date, it is attached to a document that was printed on March 14, 2007. Consequently, it follows that this note must have been given to the grievant no earlier than March 14, 2007. Moreover, another handwritten note on a document submitted by the grievant with her ruling request indicates that on March 15, 2007, another agency employee “could not approve leave because he could not go against the decision that [the HR Manager] had already made.” For purposes of this ruling, it will be assumed that the grievant became aware of the agency’s decision to deny her volunteer service leave request on March 15, 2007.⁴

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within thirty calendar days of the date he or she knew or should have known of the event or action that is the basis of the grievance.⁵ When an employee initiates a grievance beyond the thirty 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 decision to deny the grievant the ability to utilize volunteer service leave for two days while she attended an event. The grievant realized the agency would not allow her to use volunteer service leave by March 15, 2007. Therefore, she should have initiated her grievance within thirty days, i.e., no later than April 14, 2007. The grievant did not initiate her grievance until June 18, 2007, which was three months after she became aware of the agency’s decision and, thus, untimely. The only remaining issue is whether there was just cause for the delay.

The grievant states that she has endured significant events in her personal life during the first half of 2007, including a divorce and the deaths of close family members. After returning to work in March, when this issue of volunteer service leave arose, it was “all she could do” to keep focused on her work. The grievant did not feel capable of handling the conflict of a grievance. However, she chose to file this grievance after she received a Written Notice in part for unsatisfactory attendance.⁶ The agency included in the documentation of the grievant’s attendance the two days she was absent for the awards ceremony in March 2007. The grievant then sought to challenge her leave for those days.

While this Department is understanding of the grievant’s situation, it cannot be said that she has provided sufficient evidence of just cause in this case. There is no evidence that the grievant was incapacitated to the point that she was unable to protect her grievance rights at any time during the 30-day period following March 15, 2007, when she found out her request to use

⁴ If this notification in fact occurred earlier, it will not affect the outcome of this ruling. The grievant admits that she was notified prior to attending the awards ceremony on March 20, 2007 that she would not be permitted to use volunteer service leave to cover her absence.

⁵ Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4.

⁶ As noted above, the grievant has initiated a grievance on this Written Notice for unsatisfactory attendance. Therefore, she will be able to raise arguments related to the days she was out of work to attend the awards ceremony to rebut the agency’s disciplinary action in conjunction with that grievance.

volunteer service leave was denied. As such, this Department cannot conclude that just cause existed for the grievant's failure to file the grievance within the thirty calendar-day period. Because she did not initiate the grievance in a timely manner, the June 18, 2007 grievance may be administratively closed.

CONCLUSION

For the reasons set forth above, this Department concludes that the grievant has failed to demonstrate just cause for her delay. The parties are advised that the grievance should be marked as concluded due to noncompliance and no further action is required. This Department's rulings on matters of compliance are final and nonappealable.⁷

Claudia T. Farr
Director

⁷ See Va. Code § 2.2-1001(5).