

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: February 20, 2008; Ruling #2008-1958; Agency: Department of Juvenile Justice; Outcome: Grievant Not in Compliance.



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

**COMPLIANCE RULING OF THE DIRECTOR**

In the matter of Department of Juvenile Justice  
No. 2008-1958  
February 20, 2008

The grievant has requested a ruling on whether his January 16, 2008 grievance with the Department of Juvenile Justice (the agency) is in compliance with the grievance procedure. The agency asserts that the grievance was not timely initiated. For the reasons set forth below, this Department determines that the grievance is untimely and may be administratively closed.

FACTS

On December 11, 2007, the grievant was given a Group II Written Notice. The grievant initiated a grievance challenging the disciplinary action on January 16, 2008. The agency asserts that the grievance was untimely. The grievant has now sought a ruling from this Department to determine whether he was compliant with the grievance procedure.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 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.<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.

In this case, the event that forms the basis of the grievance is the agency's issuance of the Written Notice. This Department has long held that in a grievance challenging a disciplinary action, the 30 calendar-day timeframe begins on the date that management presents or delivers the Written Notice to the employee.<sup>2</sup> The grievant received the Group II Written Notice on December 11, 2007, and, thus, should have initiated this grievance within 30 days, i.e., no later than January 10, 2008. The grievant did not initiate the grievance until January 16, 2008, which was thirty-six days after the Written Notice was issued and, thus, untimely. The only remaining issue is whether there was just cause for the delay.

---

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

<sup>2</sup> E.g., EDR Ruling No. 2005-986; EDR Ruling No. 2003-147; EDR Ruling No. 2002-118.

The grievant states that he only worked nine days during the 30-day period. In addition, he argues that he needed time to meet with an attorney to decide whether to grieve the disciplinary action. Based on the foregoing, this Department cannot conclude that just cause existed for the grievant's failure to file the grievance within the requisite 30-day period. The grievant has alleged no grounds beyond his control that would justify the untimely initiation of this grievance. This Department has long held that it is incumbent upon each employee to know his or her responsibilities under the grievance procedure.<sup>3</sup> A grievant's lack of knowledge about the grievance procedure and its requirements does not constitute just cause for failure to act in a timely manner. This Department, therefore, concludes that the grievant has failed to demonstrate just cause for his delay.

However, the grievant may have additional rights under the Virginia Government Data Collection and Dissemination Practices Act (the Act). Under the Act, if the grievant gives notice that he wishes to challenge, correct or explain information contained in his personnel file, the agency shall conduct an investigation regarding the information challenged, and if the information in dispute is not corrected or purged or the dispute is otherwise not resolved, allow the grievant to file a statement of not more than 200 words setting forth his position regarding the information.<sup>4</sup> This "statement of dispute" shall accompany the disputed information in any subsequent dissemination or use of the information in question.<sup>5</sup>

#### CONCLUSION

For the reasons set forth above, this Department concludes that the grievance was not timely initiated and there is no evidence of just cause for the 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.<sup>6</sup>

---

Claudia T. Farr  
Director

---

<sup>3</sup> See, e.g., EDR Ruling No. 2008-1881; EDR Ruling No. 2002-159; EDR Ruling No. 2002-057.

<sup>4</sup> Va. Code § 2.2-3806(A)(5).

<sup>5</sup> *Id.*

<sup>6</sup> See Va. Code § 2.2-1001(5).