

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: March 24, 2008; Ruling #2008-1973; Agency: College of William and Mary; Outcome: Grievant In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF THE DIRECTOR

In the matter of College of William & Mary
No. 2008-1973
March 24, 2008

The grievant has requested a ruling on whether her February 13, 2008 grievance with the College of William & Mary (the College) 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 in compliance and may proceed.

FACTS

On December 10, 2007, the grievant was given an unsigned Group I Written Notice. Though the supervisor who issued the Written Notice later signed the file copies of the form, a signed version was never presented to the grievant. The grievant initiated a grievance challenging the disciplinary action on February 13, 2008.¹ The agency asserts that the grievance was untimely. The grievant has now sought a ruling from this Department to determine whether she 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.² 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 unsigned 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

¹ The Grievance Form A is dated February 13, 2008, as it appears that is the date the grievant signed the form. However, the response from the College indicates that the Form A was received on February 14, 2008. For purposes of this ruling only, it will be assumed that the grievance was initiated on February 13, 2008. The difference of one day does not affect the outcome of this ruling.

² Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4.

or delivers the Written Notice to the employee.³ The grievant received the unsigned Group I Written Notice on December 10, 2007. However, it does not appear that the grievant ever received a version of the Written Notice that was signed by the supervisor. This raises the question of whether the grievant was ever properly issued the Written Notice for purposes of starting the 30 calendar-day clock.

This Department consulted with the Department of Human Resource Management (DHRM) to determine what effect an unsigned Written Notice has. The DHRM Policy Analyst indicated that, similar to an Employee Work Profile or a performance evaluation, the form must be signed by the supervisor to be effective. Further, the document must be authenticated by both the supervisor issuing the Written Notice and the employee receiving the Written Notice.⁴ Without a signature, the documents cannot be validated.

Based on this information, the improperly unsigned Written Notice given to the grievant on December 10, 2007, was ineffective, and thus the 30 calendar-day timeframe was not triggered. Therefore, this grievance is not untimely. Indeed, to a certain extent, the grievance is premature. The grievance is challenging a Written Notice that appears to have never been officially issued. However, this grievance must be permitted to proceed to preserve the grievant's ability to challenge what has been done in the process to this point. The procedural anomalies that occurred in the issuance of the Written Notice further excuse the grievant's relatively minor delay in this case.⁵ Importantly, should the College re-issue a signed version of the Written Notice, the grievant would need to initiate an entirely new grievance within 30 calendar days of the date the re-issued Written Notice is presented or delivered to her.

CONCLUSION

For the reasons set forth above, this Department concludes that the grievance is in compliance and may proceed. If the grievant wishes to proceed, she should return the grievance to the first step-respondent, who must respond within five workdays of receiving the grievance package.⁶ This Department's rulings on matters of compliance are final and nonappealable.⁷

³ *E.g.*, EDR Ruling No. 2005-986; EDR Ruling No. 2003-147; EDR Ruling No. 2002-118.

⁴ It is unclear whether anyone with the College asked the grievant to sign the Written Notice. The supervisor who issued the Written Notice stated that she was "sure we said" on December 10, 2007, when the unsigned version was given to the grievant, for the grievant to review and return a signed copy. The grievant states that she was never asked to validate the form. The supervisor's supervisor, on December 14, 2007, initialed the file version of the Written Notice to indicate that the grievant had refused to sign. Based on a conversation with the supervisor's supervisor, she initialed the form because the grievant had not signed the Written Notice to that point. She herself never went back to the grievant to ask her to sign the Written Notice.

⁵ *See Grievance Procedure Manual* § 9 (defining "just cause" as "[a] reason sufficiently compelling to excuse not taking a required action in the grievance process").

⁶ *See Grievance Procedure Manual* § 3.1.

⁷ *See Va. Code* § 2.2-1001(5).

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