

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: October 16, 2008; Ruling #2009-2137; Agency: Virginia Commonwealth University; Outcome: Grievant In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF THE DIRECTOR

In the matter of the Virginia Commonwealth University
EDR Ruling No. 2009-2137
October 16, 2008

The grievant has requested a ruling on whether her grievance, dated September 4, 2008, with the Virginia Commonwealth University (VCU or 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 timely and may proceed.

FACTS

The grievant is employed by the agency as a Leasing Coordinator. On or about August 1, 2008, the grievant was presented a Group II Written Notice. Because the grievant elected not to sign the Written Notice, a Real Estate Services Manager (the first step respondent) noted on the Group II that the grievant had refused to sign. The Written Notice was subsequently forwarded to the Human Resource (HR) Department. According to an Employee Relations Specialist within the HR Department, the Written Notice received by the HR Department bearing the "refused to sign" notation was dated August 5, 2008.

On August 19, 2008, an Employee Relations Specialist within the HR Department sent the grievant the following message: "I saw your documentation came through. If you want to pursue further action, the deadline is before Friday 9/5/08. Please feel free to get back in touch with me if we need to discuss further." On September 4, 2008, the grievant initiated a grievance challenging the Group II Notice.

On September 8, 2008, the grievant was informed by the first step respondent that the grievance was untimely. Later that day, the Employee Relations Specialist apologized for "any confusion on [his] part." The grievant now seeks a ruling from this Department to determine whether her grievance is timely. She defends her delay in filing her grievance on the information provided to her by the Employee Relations Specialist.

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. 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.¹

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.² The grievant received the Group II Written Notice on August 1, 2008, and thus normally would have been required to initiate her grievance within 30 days, i.e., no later than August 31, 2008.

However, in this case, the grievant had been informed by an agency Employee Relations Specialist that she had until September 5th to take action, which effectively extended her filing deadline.³ Moreover, even if the Employee Relations Specialist did not have actual authority to extend the deadline, it was not unreasonable in this case for the grievant to rely on his representation that she had until the 5th to act. For all the above reasons, this grievance is deemed timely.

CONCLUSION

For the reasons discussed above, this Department has determined that the September 4th grievance was timely filed. By copy of this ruling, the parties are advised that within five workdays of her receipt of this ruling, the grievant must resubmit her grievance to the first-step respondent. This Department's rulings on matters of compliance are final and nonappealable.⁴

Claudia T. Farr
Director

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

² See EDR Ruling Nos. 2002-001; 2002-118; 2003-147, and 2005-986.

³ The grievance procedure allows parties to agree to extend deadlines, including the 30-day grievance filing deadline. See *Grievance Procedure Manual* § 8.4.

⁴ See Va. Code § 2.2-1001(5); Va. Code § 2.2-3003(G).