

Issue: Compliance – Grievance Procedure (30-Day Rule); Ruling Date: May 17, 2010; Ruling #2010-2623; Agency: Virginia Department of Transportation; Outcome: Grievant In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Transportation
Ruling Number 2010-2623
May 17, 2010

The grievant has requested a ruling on whether her November 23, 2009 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 it was not initiated timely. For the reasons set forth below, this Department determines that the grievance is timely and must be allowed to proceed.

FACTS

The grievant in this case challenges her October 24, 2009 separation-layoff from the agency, which was not accompanied by severance pay or recall rights. On or about October 13, 2009, the grievant was offered placement in a new position in lieu of layoff. The grievant declined the offer of placement on or about October 15, 2009. As a result, the agency separated her from employment on or about October 24, 2009, without severance pay or recall rights. The grievant initiated her grievance on November 23, 2009. Following an initial question of access to the grievance procedure, which this Department determined in EDR Ruling No. 2010-2503, granting the grievant access, the agency administratively closed the grievance asserting that the grievant did initiate the grievance in a timely manner. The grievant has now appealed that determination to this Department.

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.¹ 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 grievant challenges her October 24, 2009 separation-layoff from employment without the benefit of severance pay or recall rights as a result of the allegedly improper placement opportunity offered to her. Any alleged error in placement, if an error

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

occurred, necessarily affected the separation. As EDR has previously held in analogous cases, the event forming the basis of such a grievance is the actual separation, not the notice that such an action would likely occur in the future.² The effective date of the grievant's separation-layoff was on or about October 24, 2009. Therefore, she should have initiated her grievance within 30 days, i.e., no later than November 23, 2009. Because the grievant initiated her grievance on November 23, 2009, the challenge to her separation-layoff is timely, including the lack of accompanying severance pay and recall rights and the allegedly improper offer of placement.

Although the grievant was given her offer of placement on or about October 13, 2009, she was not required to initiate a grievance challenging the layoff process until that process was complete. Rather than requiring a grievant to separately challenge individual actions leading up and contributing to a separation by layoff, the interests of uniformity support allowing a grievant who is separated by a layoff process to grieve once the separation-layoff is final. An employee is not prevented from initiating a grievance prior to the last date of employment, but he/she will not be required to do so. Consequently, as long as a grievant separated by a layoff process has initiated a grievance within 30 calendar days of his/her final date of employment, e.g., the effective date of separation-layoff, the grievance will be considered timely to challenge the layoff and all issues contained therein leading to the separation, including offers of placement or lack thereof.

CONCLUSION

For the reasons set forth above, this Department concludes that the grievance was timely initiated and is allowed to proceed. This ruling in no way reflects the merits of the grievance, only that it is timely filed. The grievance package must be returned to the second step-respondent to be addressed at that level and proceed through the expedited grievance process. This Department's rulings on matters of compliance are final and nonappealable.³

Claudia T. Farr
Director

² EDR Ruling No. 2010-2416; EDR Ruling No. 2004-784.

³ See Va. Code §§ 2.2-1001(5); 2.2-3003(G).