

Issue: Compliance – Grievance Procedure (Other Issue); Ruling Date: June 28, 2011;
Ruling No. 2011-3012; Agency: Virginia Department of Transportation; Outcome:
Agency Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Transportation
Ruling Number 2011-3012
June 28, 2011

The grievant seeks a compliance ruling in his May 25, 2011 grievance initiated with the Department of Transportation (the “agency” or “VDOT”). The agency administratively closed the grievance on June 2, 2011. For the reasons set forth below, this Department concludes that the agency improperly closed the May 25, 2011 grievance.

FACTS

The grievant is employed as a Human Resource Division Administrator. On October 22, 2010, he initiated a grievance challenging his involuntary reassignment as a misapplication of state employment policy. That grievance asserted that the agency violated the Department of Human Resource Management (DHRM) Policy 2.20, DHRM Policy 2.10, and DHRM Policy 1.30 by reassigning him to a project with a defined end date, and thereby changing the terms and conditions of his employment. Furthermore, the grievant alleges that the reassignment was direct retaliation by his supervisor in response to emails he had sent to the Commissioner and the Chief Deputy Commissioner. The October 22nd grievance advanced through the first and second resolution steps. The grievant alleges that the agency made statements and representations during his October 22, 2010 grievance steps that he would be transferred back to his former position once the project he is currently assigned to is complete. The grievant concluded the grievance on January 28, 2011.

The grievant alleges that following the conclusion of his first grievance, on April 29, 2011 the agency posted the position he formerly held for recruitment. He alleges the posted position has the same role, working title, Employee Work Profile (EWP), and responsibilities as the position he held before he was reassigned; the only difference being the position number (Position No. 00027 vs. Position No. 22888). The grievant filed a second grievance on May 25, 2011, challenging the April 29th job recruitment posting. In his May 25th grievance, the grievant contends that after being removed from his former position, he is now being forced to reapply for that position, which he asserts is a violation of the Virginia Personnel Act. In addition, he alleges the agency misapplied VDOT Policy 2.11, DHRM Policy 2.20, DHRM Policy 2.10, DHRM Policy 1.50, DHRM Policy 1.40, and DHRM Policy 1.60.

On June 2, 2011, the agency administratively closed the May 25, 2011 grievance, stating it challenged the same management action covered in the October 22, 2010 grievance. The grievant now seeks a compliance ruling from this Department.

DISCUSSION

The grievance procedure provides that a grievance must not challenge the same management action challenged by another grievance.¹ If this requirement is not met, the agency may administratively close the grievance for noncompliance.² The grievant then has the right to request a compliance ruling from the EDR Director to overturn the closing of the grievance,³ as the grievant has done in this case.

The May 25, 2011 grievance challenges the agency's April 29, 2011 job recruitment posting, which the grievant asserts improperly requires him to reapply for his former position. The agency claims that the grievance challenges the same management action grieved in the grievant's October 22, 2010 grievance. However, while the May 25, 2011 grievance and the earlier October 22, 2010 grievance both assert that the agency involuntarily reassigned the grievant to a different project, the grievances do not challenge the same management action. The October 22, 2010 grievance challenged alleged management conduct occurring *prior* to the date of that grievance (the involuntary reassignment), whereas the grievant's May 25, 2011 grievance challenges alleged management conduct occurring *after* the conclusion of the October 22, 2010 grievance (the job posting and subsequent alleged requirement that the grievant reapply for his former position). Because the May 25, 2011 grievance challenges a different management action, it is not barred by the grievant's earlier October 22, 2010 grievance, even though the grievances involve related alleged management activity.⁴ Accordingly, we conclude that the grievant's May 25, 2011 grievance is in compliance with the grievance procedure.⁵

This Department's rulings on matters of procedural compliance are final and nonappealable.⁶

Claudia T. Farr
Director

¹ *Grievance Procedure Manual* § 2.4.

² *Id.*

³ *Id.*

⁴ *See generally* Phillips v. Public Serv. Co. of New Mexico, 33 Fed. Appx. 950, 952 (10th Cir. 2002). *See also* EDR Ruling No. 2006-1098.

⁵ We caution, however, that while there is no evidence in this case that the grievant initiated his May 25, 2011 grievance for an improper purpose, grievants may not initiate repeated grievances of the same type of management conduct in order to harass or otherwise impede the efficient operations of the agency. *Grievance Procedure Manual*, § 2.4.

⁶ *See* Va. Code § 2.2-1001 (5); 2.2-3003(G).