

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 2401-0274-09
RICKY WILLIAMS,)	
Employee)	
)	Date of Issuance: November 2, 2011
v.)	
)	
D.C. DEPARTMENT)	
OF TRANSPORTATION,)	
Agency)	Sommer J. Murphy, Esq.
_____)	Administrative Judge
Ricky Williams, <i>Pro Se</i>		
Melissa Williams, Esq., <i>Agency Representative</i>		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On September 15, 2009, Ricky Williams (“Employee”), a Wire Communication Cable Splicer, filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the D.C. Department of Transportation’s (“Agency”) action of abolishing his position through a Reduction-in-Force (“RIF”). The effective date of the RIF was August 21, 2009.

I was assigned this matter on or around January of 2011. On March 21, 2011, I issued an Order scheduling a status conference for the purpose of assessing the parties’ arguments regarding the RIF. The status conference was rescheduled several times and a phone conference was held on September 28, 2011. I subsequently issued an order directing Employee to submit a brief on the issue of whether Agency’s RIF was properly implemented. Agency was given the option of submitting a reply brief. Employee did not submit a post-status conference brief. After examining their respective arguments and reviewing the record, I determined that a hearing was not warranted.

JURISDICTION

This Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether Agency's action of separating Employee from service pursuant to a RIF was done in accordance with all applicable laws, rules, or regulations.

FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

Employee worked as a WS-2504-11 Wire Communications Cable Splicer. In his appeal, Employee takes exception to the competitive area in which he was placed when the RIF was conducted. Employee argues that the RIF was, in part, conducted on the basis of age. He also submits that Agency did not give a fair advantage to current employees and did not provide them with adequate job training to assist them in their field of work.

In response, Agency argued that it conducted the RIF in accordance with the District of Columbia Municipal Regulations and the D.C. Official Code. Agency further stated that it provided Employee with the proper notification and one round of lateral competition. Because Employee's termination was the result of a RIF, I am guided by D.C. Official Code § 1-624.08, which states in pertinent part that:

(d) An employee affected by the abolishment of a position pursuant to this section who, but for this section would be entitled to compete for retention, shall be entitled to one round of lateral competition... which shall be limited to positions in the employee's competitive level.

(e) Each employee selected for separation pursuant to this section shall be given written notice of at least 30 days before the effective date of his or her separation.

(f) Neither the establishment of a competitive area smaller than an agency, nor the determination that a specific position is to be abolished, nor separation pursuant to this section shall be subject to review except that:

(1) An employee may file a complaint contesting a determination or a separation pursuant to subchapter XV of this chapter or § 2-1403.03; and

(2) An employee may file with the Office of Employee Appeals an appeal contesting that the separation procedures of subsections (d) and (e) were not properly applied.

Accordingly, the issues to be decided in this matter under the aforementioned statute are: 1) whether an employee received written thirty (30) days notice prior to the effective date of their separation from service; and 2) whether the employee was afforded one round of lateral competition within his/her competitive level.

This Office has consistently held that when a separated employee is the only member of his/her competitive level or when an entire competitive level is abolished pursuant to a RIF, “the statutory provision affording [him/her] one round of lateral competition was inapplicable.¹ In this case, there were four (4) employees with the title of Wire Communication Cable Splicer in Employee’s competitive level. Employee’s Service Computation Date (“SCD”) was December 21, 1986. However, all four positions were eliminated as a result of the RIF. Because the entire competitive level was abolished, Agency was not required to afford Employee one round of lateral competition.

The notice of termination letter was dated July 17, 2009. The effective date of the RIF was August 21, 2009. I find that Employee received thirty (30) days written notice prior to the effective date of her termination as required by D.C. Official Code § 1-624.08.

With respect to Employee’s argument that he was unfairly discriminated against on the basis of age, it should be noted that according to the ruling in *Anjuwan v. D.C. Department of Public Works*, 729 A.2d. 881 (December 11, 1998), this Office’s authority over RIF matters is narrowly prescribed. The court in *Anjuwan* held that OEA does not have the authority to determine whether the agency conducting the RIF was bona fide or violated any law, other than the RIF regulations themselves. This Office is not the proper venue to adjudicate Employee’s grievances regarding any allegations of age discrimination.

Based on the record, I find the Agency complied with D.C. Official Code § 1-624.08. Agency properly implemented the RIF which resulted in Employee’s termination. Accordingly, this matter should be dismissed.

ORDER

It is hereby ORDERED that Agency’s action of abolishing Employee’s position through a Reduction-in-Force is UPHOLD

FOR THE OFFICE:

Sommer J. Murphy, Esq.
Administrative Judge

¹ See e.g., *Fink v. D.C. Public Schools*, OEA Matter No. 2401-0142-04 (June 5, 2006), *Sivolella v. D.C. Public Schools*, OEA Matter No. 2401-0193-04 (December 23, 2005).