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COMPLIANCE RULING

In the matter of the Virginia Department of Transportation
Ruling Number 2023-5510
February 6, 2023

The Virginia Department of Transportation (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management in relation to the grievant's December 12, 2022 grievance.¹ The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding her grievance.

FACTS

On or about December 12, 2022, the grievant initiated an expedited grievance with the agency. The single-step respondent issued a response dated December 27, 2022. The agency states that the grievant received the response on January 9, 2023. Having received no further response from the grievant indicating whether they wished to advance or conclude the grievance, the agency sent a notice of noncompliance to the work and personal emails for the grievant on January 13. In its notice of noncompliance, the agency requested a response from the grievant within five workdays of receipt of the notice. Because more than five workdays have elapsed since the grievant received notice of the alleged noncompliance and the grievance has not yet been advanced or concluded, the agency seeks a compliance ruling allowing it to administratively close the grievance.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.² That process assures that the parties first communicate with each other about the noncompliance, and resolve any problems voluntarily, without EDR's involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.³ If the opposing party fails to correct the noncompliance within this five-day period, the party claiming noncompliance may seek a compliance ruling from EDR, who may in turn order the party to correct the noncompliance or,

¹ The grievance is dated December 10, but the agency states that the grievance was filed on December 12, 2022.

² *Grievance Procedure Manual* § 6.3.

³ *See id.*

in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue. When EDR finds that either party to a grievance is in noncompliance, its ruling will (i) order the noncomplying party to correct its noncompliance within a specified time period, and (ii) provide that if the noncompliance is not timely corrected, a decision in favor of the other party will be rendered on any qualifiable issue, unless the noncomplying party can show just cause for the delay in conforming to EDR's order.⁴

In this case, the grievant appears to have failed to advance or conclude this grievance within five workdays of receiving the agency's single resolution step response, as required by the grievance procedure.⁵ Moreover, the agency notified the grievant of the noncompliance and the grievant has not advanced or concluded the grievance. It appears that the agency sent the notice of noncompliance on January 13, only four workdays after the grievant received the single-step response, but regardless, the grievant has apparently not responded as of January 25. For that reason, it can be interpreted as the grievant not responding within 5 workdays.

As the grievant has apparently failed to advance or conclude this grievance in a timely manner, the grievant has failed to comply with the grievance procedure. EDR therefore orders the grievant to correct the noncompliance **within ten workdays of the date of this ruling** by notifying the agency's human resources office in writing to conclude the grievance or request qualification for a hearing. If the grievant does not, the agency may administratively close the grievance without any further action on its part. The grievance may be reopened only upon a timely showing by the grievant of just cause for the delay (for example, a serious illness, or other circumstances beyond the grievant's control).

EDR's ruling on matters of compliance are final and nonappealable.⁶

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⁴ Although the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party in cases of substantial noncompliance with procedural rules, EDR favors having grievances decided on the merits rather than procedural violations. Thus, EDR will *typically* order noncompliance corrected before rendering a decision against a noncompliant party. However, where a party's noncompliance appears driven by bad faith or a gross disregard of the grievance procedure, EDR will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

⁵ See *Grievance Procedure Manual* § 3.4.

⁶ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).