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COMPLIANCE RULING

In the matter of Virginia State University
Ruling Number 2023-5429
August 1, 2022

Virginia State University (the “university”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) in relation to the grievant’s January 5, 2022 grievance. 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 January 5, 2022, the grievant initiated a grievance with the university. The grievance proceeded through the management resolution steps, and the third-step respondent provided his response to the grievant via email dated April 13, 2022.¹ Operating under the belief that no further response had been received from the grievant, the university then sent, also via email, a notice of noncompliance to her on June 14, 2022. On June 21, 2022, the grievant responded: “How am I out of compliance?”² Subsequently, on July 1, 2022, the university requested a compliance ruling from EDR seeking to administratively close the grievance.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.³ That process assures that the parties first communicate with each other about the noncompliance and resolve any compliance problems voluntarily, without EDR’s involvement. Specifically, the party claiming noncompliance must notify the other party of any

¹ For purposes of this ruling, EDR will assume the grievant received the agency’s emailed third step response and notice of noncompliance because there is nothing to indicate that they may have been sent to an incorrect email address or was otherwise improperly addressed. *Cf., e.g.,* Washington v. Anderson, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988) (holding that the mailing of correspondence, properly addressed and stamped, raises a presumption of receipt of the correspondence by the addressee). It appears that a further response was sent to the grievant on April 15, 2022, responding to additional information provided by the grievant.

² EDR has not been provided with any communication that indicates the grievant received a response to her question.

³ *Grievance Procedure Manual* § 6.3.

noncompliance in writing and allow five workdays for the opposing party to correct it.⁴ 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, which may in turn order the party to correct the noncompliance or, 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.⁵

In this case, the available facts show that the grievant has advanced her grievance within five workdays of receiving the agency's third-step response.⁶ The grievant provided documentation that reflects she chose to advance her grievance and requested that the president of the university review her grievance for qualification. It appears that this documentation was submitted to the president on April 22, 2022 by email. The grievant has confirmed to EDR, and to the agency, her intention to advance her grievance and seek qualification for a hearing. Accordingly, EDR has no basis to find that the grievant has failed to comply with the grievance procedure.

EDR therefore respectfully denies the agency's request to administratively close the grievance for non-compliance and directs the university to provide the Grievance Form A to the agency head (or designee) for a qualification determination (if this has not already occurred), to be provided to the grievant **within five workdays of the date of this ruling**.

EDR's rulings on matters of compliance are final and nonappealable.⁷

Christopher M. Grab
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⁴ *See id.*

⁵ While in cases of substantial noncompliance with procedural rules the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party, 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 to be 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.

⁶ *See Grievance Procedure Manual* § 3.3.

⁷ *See* Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).