

Issue: Compliance – Grievance Procedure (second step meeting); Ruling Date: May 14, 2018; Ruling No. 2018-4718; Agency: Department of Accounts; Outcome: Agency in Compliance.



**COMMONWEALTH of VIRGINIA**  
**Department of Human Resource Management**  
**Office of Equal Employment and Dispute Resolution**

**COMPLIANCE RULING**

In the matter of the Department of Accounts  
Ruling Number 2018-4718  
May 14, 2018

The grievant has requested a ruling from the Office of Equal Employment and Dispute Resolution (“EEDR”) at the Department of Human Resource Management in relation to alleged noncompliance with the grievance procedure by the Department of Accounts (the “agency”).

FACTS

The grievant filed a grievance with the agency on April 10, 2018, challenging the issuance of a Group II Written Notice. After the second step meeting took place, the second step-respondent issued a response on or about April 18, 2018, in which she declined to reduce or rescind the Written Notice. The grievant sent a notice of noncompliance to the agency head on the same date, alleging that the second step response did not comply with the grievance procedure because the step-respondent did not fully address the issues raised in the grievance. After the alleged noncompliance was not resolved within five workdays, the grievant requested a compliance ruling from EEDR.

DISCUSSION

*Sufficiency of the Second Step Response*

In his request for a compliance ruling, the grievant alleges that the agency’s second step response “address[es] none of the issues raised or relief requested.” Section 3.2 of the *Grievance Procedure Manual* states that the second step response “must address the issues and the relief requested and should notify the employee of his/her procedural options.” While the step-respondent is not required to respond to each and every point or factual assertion raised by the employee, she must generally address each issue raised and the requested relief.<sup>1</sup> In this case, the grievant identified six separate issues, all of which relate to the agency’s issuance of the Group II Written Notice, in an attachment to the Grievance Form A. More specifically, the grievant alleges that the Written Notice contains “factual inaccuracies and material omissions,” does not comply with state and/or agency policy, and was issued as an act of retaliation based on his previous attempts to discuss workplace issues with management. The grievant further contends that the agency provided him with inadequate due process and inaccurate information about the grievance procedure.

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<sup>1</sup> E.g., EDR Ruling No. 2015-4155; EDR Ruling No. 2011-2869.

Having reviewed the second step response in the context of the particular facts surrounding this case, EEDR concludes that it is adequate. The response addresses the issues raised, if not expressly, certainly implicitly, as well as the relief requested by the grievant. While the grievant disagrees with the second step-respondent's discussion of the issues, it is clear that the step-respondent viewed the agency's issuance of the Group II Written Notice as the challenged management action. The second step-respondent addressed the grievant's claims relating to the agency's justification for issuing the Written Notice, admittedly briefly, and indicated that there was no basis to reduce or rescind the disciplinary action. While the second step-respondent could have provided a more detailed response by, for example, explicitly stating that retaliation had not occurred or that the agency had complied with state and/or agency policy in issuing the discipline, the denial of relief in upholding the Written Notice has done essentially that. Accordingly, EEDR finds that the response substantially complies with the requirements of the grievance procedure by addressing the issues and relief requested and advising the grievant of his procedural options.

The grievant further asserts that the second step-respondent "attempted to engage in *ex post facto* justification for the Group II Written Notice" by articulating a different basis for the discipline than the description provided in the Written Notice itself. This argument is not persuasive. The second step-respondent's commentary on the agency's basis for issuing the discipline does not alter the description of the charged misconduct that is articulated in the Written Notice itself. From EEDR's review of the response, it appears that the second step-respondent was attempting to offer a more detailed explanation of the incident that prompted the disciplinary action. While the grievant may disagree with the step-respondent's characterization of events, EEDR does not find noncompliance as to this issue at this time.

#### *Alleged Substantial Noncompliance*

Finally, the grievant argues that the alleged issues of noncompliance discussed above should be considered substantial noncompliance with the grievance procedure and, as relief, he requests that EEDR "dismiss the Written Notice . . . ." Although the grievance statutes grant EEDR the authority to render a decision on a qualifiable issue against a noncompliant party in cases of substantial noncompliance with the grievance procedure,<sup>2</sup> EEDR favors having grievances decided on the merits rather than procedural violations. Thus, EEDR will *typically* order noncompliance corrected before rendering a decision against a noncompliant party. The agency's actions in this case, if they can be considered noncompliance, do not rise to the level that would justify a finding of substantial noncompliance or the extreme sanction sought by the grievant in case. Accordingly, the relief requested by the grievant is denied.

#### CONCLUSION

Based on the foregoing, EEDR finds that the agency has substantially complied with the requirements of the grievance procedure. To proceed with the grievance, the grievant must either advance the grievance to the next step or notify the agency's human resources office in writing

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<sup>2</sup> Va. Code § 2.2-3003(G).

that he wishes to conclude his grievance **within five workdays of receipt of this ruling.** EEDR's rulings on matters of compliance are final and nonappealable.<sup>3</sup>



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Office of Equal Employment and Dispute Resolution

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<sup>3</sup> See *id.* §§ 2.2-1202.1(5), 2.2-3003(G).