



EMILY S. ELLIOTT
DIRECTOR

COMMONWEALTH OF VIRGINIA
Department Of Human Resource Management
Office of Employment Dispute Resolution

James Monroe Building
101 N. 14th Street, 12th Floor
Richmond, Virginia 23219

Tel: (804) 225-2131
(TTY) 711

COMPLIANCE RULING

In the matter of the Virginia Department of Corrections
Ruling Number 2022-5368
March 18, 2022

The Virginia Department of Corrections (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 alleged failure to comply with the time limits set forth in the grievance procedure for advancing or concluding his grievance.

FACTS

On February 4, 2022, the grievant initiated a grievance with the agency raising issues with reimbursement for travel to conduct official agency business. According to the agency, the grievant subsequently resigned on February 9. The first-step respondent issued a response dated February 15, apparently granting the relief sought by the grievant.¹ The agency requested a compliance ruling from EDR on February 23, seeking 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 compliance 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, in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue. When an EDR ruling finds that either party to a grievance is in noncompliance, the 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

¹ It is unclear how the first step response was delivered to the grievant, but he appears to have acknowledged that he received the agency’s response.

² *Grievance Procedure Manual* § 6.3.

³ *See id.*

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 agency's request for a compliance ruling appears to be premature because it has not shown that it first notified the grievant in writing of the alleged procedural violation. There is no indication that the agency provided the grievant with a notice of noncompliance informing him that his grievance is not in compliance with the grievance procedure after the first step response was issued. Ordinarily, this is a situation in which EDR would direct the agency to give written notice of the alleged noncompliance to the grievant and allow the grievant five workdays to correct any noncompliance before seeking a compliance ruling. While this ruling was pending, however, the grievant confirmed that he has received the relief he sought from the agency and does not wish to proceed further with the grievance. Based on the grievant's representations, EDR therefore considers this grievance concluded.

EDR's rulings on matters of compliance are final and nonappealable.⁵

Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁴ 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 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 Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).