

Issue: Compliance – Grievance Procedure (2nd Step Meeting); Ruling Date: February 27, 2013; Ruling No. 2013-3542; Agency: Department of Alcoholic Beverage Control; Outcome: Agency Not in Compliance.



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

COMPLIANCE RULING

In the matter of the Department of Alcoholic Beverage Control
Ruling Number 2013-3542
February 27, 2013

The grievant has requested a compliance ruling regarding his January 3, 2013 grievance with the Department of Alcoholic Beverage Control (the “agency”). The grievant claims that the agency has violated a substantial requirement of the grievance procedure, without just cause, by failing to address the issues of his grievance in the second resolution step response.

FACTS

On or about January 3, 2013, the grievant initiated a grievance with the agency regarding his reassignment to another position within the agency. On January 8, 2013, the first resolution step response was issued to the grievant, stating “unable to address at this level.” While the grievant indicated his comments that he “request[s] respondent address each issue,” nevertheless, he chose to advance his grievance to the second resolution step. The agency held the second resolution step meeting with the grievant on January 25, 2013. On or about January 30, 2013, the agency issued the second resolution step response to the grievant. The second resolution step response stated “I cannot provide the relief requested.”

On February 1, 2013, the grievant sent an e-mail to the second step-respondent, alleging that the second step response did not address the two issues raised in the grievance. On February 6, 2013, the second step-respondent provided the grievant with the following explanation: “I have considered your input during the second step meeting and reviewed the documents that you provided and I cannot grant the relief requested.” Thereafter, on February 7, 2013, the grievant notified the agency head of the alleged noncompliance via e-mail. Since more than five workdays have elapsed since the grievant’s notification to the agency head of the alleged noncompliance, the grievant now seeks a compliance ruling from this office.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.¹ 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

¹ *Grievance Procedure Manual* § 6.3.

in writing and allow five workdays for the opposing party to correct any noncompliance.² 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 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.³

Here, the grievant asserts that the second resolution step response did not satisfy the requirements of the grievance procedure by failing to adequately respond to the issues presented. Under the grievance procedure, the second step-respondent must provide a written response within five workdays of the second step meeting absent an agreement between the parties to extend the deadline.⁴ The written response must address the issues and relief requested and notify the employee of his or her procedural options.⁵

In this instance, the grievant claimed that the agency has engaged in retaliation against him for filing a prior grievance and challenges his reassignment to a position he alleges has reduced authority and responsibility. As relief, he requests that the agency return him to his prior position. The second resolution step response, while addressing the relief requested, failed to address the issues presented in this grievance.⁶ A response that simply denies relief, without more, is noncompliant with the grievance procedure.⁷ Such a response provides no indication that the second step-respondent gathered the necessary information or reviewed the facts such that he could provide a reasoned response to the grievance and the primary issues contained therein.

Though the second step-respondent in this instance subsequently supplemented his response to the grievant to indicate that he "considered [the grievant's] input during the second step meeting and reviewed the documents [he] provided," still, this response is inadequate under

² *See id.*

³ 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.

⁴ *Grievance Procedure Manual* § 3.2

⁵ *Id.*

⁶ Though the grievant does not challenge the first resolution step response in his request for a compliance ruling, we note that the first resolution step response similarly failed to address the issues presented. While we recognize that it may be difficult for a first step-respondent to respond where he or she has not taken the action being grieved, still, it is not permissible to abdicate the duty of the first step-respondent to (i) become familiar with the fundamental facts and circumstances of the case, (ii) provide a reasoned response to the primary issues presented and relief requested by the grievance, and (iii) notify the grievant of his procedural options. *See* EDR Ruling No. 2010-2455; EDR Ruling No. 2009-2200, 2009-2201.

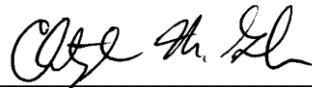
⁷ *See* EDR Ruling No. 2010-2377.

the grievance procedure. The grievant has raised two concerns in his grievance and presented factual information purportedly in support of his assertions. Work-related issues such as those raised here are a proper subject of an employee's grievance⁸ and, therefore, must be addressed by the second step-respondent. The written response does not address the grievant's claims regarding the agency's alleged retaliation and the grievant's reassignment. While the second step-respondent need not respond to every point or factual assertion by the grievant, the primary issues raised by the grievant were not addressed in this second resolution step response. A proper response to these issues may not need to be lengthy, but a step-respondent fails to adhere to the requirements of the grievance procedure when the grieved issues are not addressed at all.⁹ The grievance must be returned to the second step-respondent for the issues raised by the grievant to be addressed.

CONCLUSION

For the reasons discussed above, EDR concludes that the agency has failed to comply with the grievance procedure by providing an inadequate second step response. The agency is directed to have the designated second step-respondent provide the grievant with a revised written response to the grievance, consistent with this ruling, within **five workdays** of receipt of this ruling. This response must address the issues raised by the grievance, as well as the relief requested, and notify the grievant of his procedural options.

EDR's rulings on matters of compliance are final and nonappealable.¹⁰



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⁸ See, e.g., Grievance FAQ No. 2, at <http://www.dhrm.virginia.gov/EDR/faqs.htm>.

⁹ See, e.g., EDR Ruling No. 2008-1786; EDR Ruling No. 2004-851; see also, e.g., EDR Ruling No. 2009-2347.

¹⁰ See Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).