

Issue: Compliance – Grievance Procedure (Hearings); Ruling Date: January 7, 2014;
Ruling No. 2014-3789; Agency: Old Dominion University; Outcome: Hearing Officer
in Compliance.



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

COMPLIANCE RULING

In the matter of Old Dominion University
Ruling Number 2014-3789
January 7, 2014

The grievant has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management to challenge the hearing officer’s pre-hearing direction regarding the exchange of evidence in Case Number 10240. For the reasons discussed below, EDR does not find non-compliance with the grievance procedure in this instance.

FACTS

The grievant was issued a Group III Written Notice with termination on or about October 25, 2013 for threatening violence in the workplace. The grievant filed a dismissal grievance challenging his termination and a hearing officer was appointed on December 5, 2013. During the pre-hearing conference call, the grievant apparently indicated that he seeks to have admitted as evidence at the hearing four voicemail messages left for him by his supervisor. However, he states that he is unable to provide the contents of these messages to the other party and the hearing officer in advance of the date of the hearing. The grievant thus has requested a ruling from EDR, alleging that the hearing officer’s direction to exchange the audio (voicemail) evidence is not in compliance with the grievance procedure.

DISCUSSION

Under the *Grievance Procedure Manual*, a hearing officer has the authority to rule on procedural matters, render written decisions and provide appropriate relief, and take any other actions as necessary or specified in the grievance procedure.¹ To this end, the hearing officer has the authority to require the parties to exchange a list of witnesses and documents.² An action taken by a hearing officer in the exercise of his authority to determine procedural matters will only be disturbed where it constitutes an abuse of discretion.³

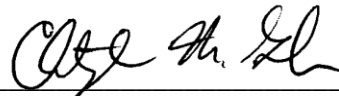
¹ *Grievance Procedure Manual* § 5.7; see also Va. Code § 2.2-3005.

² *Id.* at § 5.7(2).

³ See, e.g., EDR Ruling No. 2003-123, EDR Ruling No. 2004-742, EDR Ruling No. 2004-934, and EDR Ruling No. 2005-1037.

Here, the grievant seeks to introduce as evidence four voicemail messages left on his cellular telephone and asserts that “[t]here is no way for [him] to copy the messages and send them to the Hearing Officer or to the University Counsel.” While we understand that unique difficulties may be presented by seeking to introduce this particular type of evidence, nevertheless, we find no abuse of discretion in the hearing officer’s requirement that the grievant exchange the evidence with the University. The grievant could, for instance, transcribe the contents of the voicemail message to a writing and exchange the writing with the other party to satisfy such a requirement. In the alternative, the grievant could utilize a recorder of various types to record the contents of those messages to send to the University and hearing officer. Accordingly, we do not find that the hearing officer’s direction that all evidence should be exchanged prior to the date of the hearing presents an undue burden on the grievant or is inconsistent with the *Grievance Procedure Manual*. The hearing officer has not abused his discretion in this instance.

EDR’s rulings on matters of compliance are final and nonappealable.⁴



Christopher M. Grab
Director
Office of Employment Dispute Resolution

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