

Issue: Compliance – Grievance Procedure (Second Step Meeting); Ruling Date: May 21, 2014; Ruling No. 2014-3890; Agency: Old Dominion University; Outcome: Agency 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 2014-3890
May 21, 2014

The grievant has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management in relation to the alleged failure of Old Dominion University (the “University”) to comply with the grievance procedure.

FACTS

The procedural and substantive facts of this case are set forth in EDR’s prior compliance ruling on this matter and are incorporated herein by reference.¹ In that ruling, issued May 12, 2014, EDR ordered the University to schedule the second step meeting within five workdays.² On the same day, a member of the University’s Human Resources Office notified the second step-respondent via email that EDR had ordered the grievance to proceed, that the grievant had waived the second step meeting, and that only a written response was required. This information was consistent with prior communications from the grievant in which he affirmatively stated that he wished to waive the second step meeting.

The following day, May 13, the grievant notified the University that he now wished to “request an alternate respondent” because he is alleging retaliation by his second step-respondent. The grievant further stated that he would “make the determination whether to waive the meeting” after learning who the University designated as an alternate step-respondent. Several hours later, the second step-respondent delivered her written response to the grievant via email. On May 14, the grievant again emailed the University, reiterating his desire to have the second step meeting with an alternate step-respondent. Having apparently received no response from the University, the grievant requested a compliance ruling from EDR on May 15.

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 the

¹ See EDR Ruling No. 2014-3881.

² *Id.*

³ *Grievance Procedure Manual* § 6.3.

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.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 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.⁵

In this case, the grievant's request for a compliance ruling is premature because he has not shown that he first notified the University President in writing of the alleged violation and gave the University five workdays to correct the purported noncompliance, as required by the grievance procedure.⁶ While EDR will, in some circumstances, address claims of noncompliance when the appropriate notice of noncompliance has not been given, we decline to do so here.⁷

Without determining the issue, it appears that the University's decision to issue a written second step response was based on previous communications from the grievant stating that he wished to waive the second step meeting. That the grievant seemingly changed his mind a few hours before receiving the second step response does not necessarily indicate that the University's actions were improper. Indeed, it is possible that the grievant's claims of noncompliance could be resolved by the parties themselves. The grievant is therefore advised that if he desires a compliance ruling from EDR, he must first give written notice of the alleged noncompliance to the University President and allow the University five workdays to correct any noncompliance. Only after the grievant has satisfied this procedural prerequisite will EDR address his claim of noncompliance.

EDR's rulings on matters of compliance are final and nonappealable.⁸



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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 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 *Grievance Procedure Manual* § 6.3.

⁷ *See, e.g.*, EDR Ruling No. 2014-3689; EDR Ruling No. 2014-3676.

⁸ Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).