

Issue: Compliance – Grievance Procedure (Resolution Steps); Ruling Date: June 1, 2015; Ruling No. 2015-4155; Agency: Virginia Department of Transportation; Outcome: Agency in Compliance.



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

**COMPLIANCE RULING**

In the matter of the Virginia Department of Transportation  
Ruling Number 2015-4155  
June 1, 2015

The grievant has requested that the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”) rule on various aspects of alleged noncompliance with the grievance procedure in his November 5, 2014 grievance by the Virginia Department of Transportation (the “agency”).

FACTS

The grievant is employed by the agency as a Division Administrator, and formerly worked in a position with the agency’s human resources office. In October 2010, he was transferred to a specialized, off-site agency project and informed that his reassignment would be temporary.<sup>1</sup> On or about November 5, 2014, the grievant filed a grievance with the agency challenging his “continued temporary assignment” and requesting, as relief, that the agency provide him with “information and documentation” that would allow him to “fully assess the agency’s actions and potential future actions” and their impact on his return to his former position, and also asking that the agency comply with its code of ethics, state and agency policies, and applicable laws “with respect to [his] employment . . . and [his] assignment.”

The grievant met with his supervisor and another manager on December 22, 2014 to discuss his request for information and other issues cited in the grievance. At the meeting, the grievant was given a memorandum stating that his reassignment was no longer temporary and that the agency would create an Employee Work Profile (“EWP”) defining his position and job responsibilities. It appears the parties agreed shortly after the meeting to place the grievance on hold in an effort to informally resolve the grievance. While the grievance was on hold, the grievant engaged in discussions with agency management about his EWP. On March 11, 2015, the grievant was given a completed EWP.

On April 28, 2015, the grievant’s supervisor informed him that the agency no longer wished to keep the grievance on hold. The grievant received the first step response on the following day, April 29. The response stated: “[r]elief has been provided to employee as requested. In addition, employees [sic] Employee Work Profile has been finalized and

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<sup>1</sup> There is an extensive factual background to the issues underlying this case. For additional discussion about the grievant’s transfer and some of the previous grievance history surrounding that management action, see EDR Ruling Number 2014-3679.

delivered.” The grievant provided a notice of noncompliance to the agency head on May 5, 2015, alleging that the first step response did not comply with the grievance procedure for a variety of reasons. After the alleged noncompliance was not resolved within five workdays, the grievant requested a compliance ruling from EDR on May 21, 2015.

## DISCUSSION

### *Adequacy of First Step Response*

In his request for a compliance ruling, the grievant first alleges that the agency “failed to provide a 1<sup>st</sup> step response that addresses the issues of the grievance . . . .” Section 3.1 of the *Grievance Procedure Manual* provides that the first 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>2</sup> The procedural background of this case, however, is unique. Between November 5, 2014, the date the grievance was filed, and April 29, 2015, the date the grievant received the first step response, the agency provided the grievant with information and an EWP in an attempt to resolve the issues raised in the grievance. Specifically, the memorandum delivered to the grievant on December 22, 2014 stated that the agency “no longer view[ed] [his] position . . . as temporary” and that the grievant would receive “an updated EWP outlining the core responsibilities of [his] position.” The grievant apparently communicated at length with agency management about the content of his EWP during the ensuing four months. After the EWP was completed and the agency determined the grievance should resume, it provided a response stating that the grievant’s issues had been resolved and his requested relief had been granted.

As a result, it appears the first step response was written to describe the agency’s perspective of preceding events and convey its belief that it had resolved grievant’s issues. In a case such as this one, where an agency has engaged in lengthy communications with a grievant in an effort to address his concerns and has seemingly reached a conclusion, we decline to hold that a response setting forth the agency’s understanding of the outcome does not comply with the grievance procedure. Based on a review of the grievance record, EDR concludes that the first step response was issued in good faith and communicated the agency’s belief that the grievant’s concerns had been addressed.

Even if we assume the first step response does not comply with the grievance procedure, requiring the grievant’s supervisor to issue an amended response would only serve to waste time, duplicate effort, and needlessly delay the grievance process in this case. It is unlikely that an amended first step response would provide the grievant any additional information beyond what he already knows from the discussions that took place between him, his supervisor, and other agency managers before the first step response was issued. As a result, it is simply more efficient in this case for the grievance to advance to the second step if the grievant is not satisfied with the first step response and does not wish to conclude the grievance.

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<sup>2</sup> *E.g.*, EDR Ruling No. 2011-2869.

*The “De Facto” First Step Meeting*

In addition, the grievant claims the agency “conducted a de facto 1<sup>st</sup> step grievance meeting” on December 22, 2014 without informing him that the meeting “was for the purpose of discussing the issues of the grievance . . . .” We are not persuaded by this claim and do not find that the agency’s actions at the meeting were contrary the requirements of the grievance procedure. While a meeting is not required at the first step, the *Grievance Procedure Manual* does state that “the first-step respondent should identify the issues, gather information and review the facts” before issuing a response.<sup>3</sup> The process of gathering information and reviewing the facts would appear, of necessity, to consist of assessing the circumstances surrounding the grievance, including events that may have occurred after the initiation of the grievance. By all accounts, the grievant agreed to place the grievance on hold after the December 22 meeting while the agency developed an EWP for his position. None of the information that EDR has reviewed suggests the grievant or the agency viewed this process as anything other than an effort to resolve the issues presented in the grievance. EDR has reviewed nothing to indicate the agency may have acted improperly in this case. Accordingly, there is no basis for EDR to conclude that the agency’s actions in relation to the December 22 meeting failed to comply with the grievance procedure.

*Agency’s Award of Relief*

Finally, the grievant asserts that the first step response “states the agency was providing the relief as requested,” but the agency has not provided relief to his satisfaction. He requests that EDR “direct VDOT to comply with the Commonwealth’s Grievance Procedure and the Code of Virginia . . . by informing [him] of [his] return assignment” to his former position. We decline to act on this demand. The language used in the first step response does not appear to create some kind of obligation for the agency to provide further relief it has not already provided. If the grievant is not satisfied with the first step response and/or the relief provided, he may advance the grievance to the second step.

To the extent the grievant’s arguments on this issue can be construed as a request for EDR to render a decision against the agency due to substantial noncompliance the grievance procedure, we do not find that such action is warranted here. While the “failure [of a party] to comply with a substantial procedural requirement of the grievance procedure without just cause may result in a decision against the noncomplying party on any qualified issue,”<sup>4</sup> EDR favors having grievances decided on the merits rather than procedural violations. The agency’s actions in this case do not rise to the level that would justify such extreme action.

CONCLUSION

Based on the foregoing, EDR finds that the agency has substantially complied with the requirements of the grievance procedure. To proceed with the grievance, the grievant must

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<sup>3</sup> *Grievance Procedure Manual* § 3.1.

<sup>4</sup> Va. Code § 2.2-3003(G).

either advance the grievance to the second step or notify the agency's human resources office in writing that he wishes to conclude his grievance **within five workdays of receipt of this ruling**. EDR's rulings on matters of compliance are final and nonappealable.<sup>5</sup>



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Christopher M. Grab  
Director  
Office of Employment Dispute Resolution

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<sup>5</sup> See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).