

Issues: Compliance – Grievance Procedure (5-Day Rule, Second-Step Meeting, Other Issue); Ruling Date: December 30, 2013; Ruling No. 2013-3774; 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 2014-3774
December 30, 2013

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management related to alleged noncompliance with the grievance procedure by the Virginia Department of Transportation (the “agency”) in the handling of her September 19, 2013 grievance.

FACTS

On or about September 19, 2013, the grievant initiated a grievance with the agency challenging her position classification. The first step response was issued to the grievant on September 25, and she advanced her grievance to the second step on September 30. The grievant and the agency both agreed to attempt to resolve the issues that gave rise to the grievance through mediation on October 2. On the following day, October 3, the grievant withdrew her consent to mediate. The agency forwarded the grievance to the second step-respondent on October 4.

On October 9, 2013, the second step-respondent requested consent from the grievant to extend the mandated five-workday time period for him to issue his response so the agency could conduct a review of the grievant’s position classification. The grievant agreed and, on November 18, the second step-respondent issued his response. The grievant requested a compliance ruling from EDR on November 25, alleging “noncompliance, numerous delays and Grievance procedure deficiencies” on the agency’s part and citing multiple alleged compliance issues.

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

¹ *Grievance Procedure Manual* § 6.3.

² *See id.*

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 claims that the second step-respondent failed to respond to her grievance within five workdays of when he initially received it on October 4, 2013. She also asserts that he failed to respond to her grievance within five workdays after the completion of the classification review on October 28, 2013. The second step response was ultimately issued, however, on November 18, 2013.

The grievant also asserts that the second step response "did not address the issues nor the relief requested." Section 3.2 of the *Grievance Procedure Manual* provides that the second step response "must address the issues and the relief requested and should notify the employee of his/her procedural options." While the second step-respondent is not required to respond to each and every point or factual assertion raised by the employee, the respondent must address each issue raised and the requested relief. Although the second step response in this case is brief, it is apparent that the second step-respondent considered the issues raised by the grievant and determined that he could not grant the relief she had requested. Accordingly, we find that the second step-respondent fulfilled the requirements of the grievance procedure by providing a written response that addresses the issues and relief requested.

To the extent that the grievant's request for a compliance ruling is 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 grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party in cases of substantial noncompliance with the grievance procedure,⁴ EDR favors having grievances decided on the merits rather than procedural violations. The agency's noncompliance in this case, if any, does not rise to the level that would justify such extreme action.

CONCLUSION

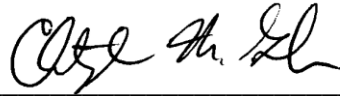
For the reasons set forth above, there is no basis to render a decision against the agency for failure to comply with the grievance procedure at this time. To proceed with this grievance,

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 Va. Code § 2.2-3003(G).

the grievant must either advance her grievance to the third step or conclude her grievance **within ten workdays of the date of this ruling.**

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



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Office of Employment Dispute Resolution

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