

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: August 5, 2014; Ruling No. 2015-3965; Agency: Department of Corrections; Outcome: Grievant Not 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 2015-3965  
August 5, 2014

The Virginia Department of Transportation (the “agency”) has requested a compliance ruling related to two grievances filed by the grievant. The agency requests permission from the Office of Employment Dispute Resolution (“EDR”) to administratively close the grievances.

FACTS

The grievant initiated two grievances with the agency on or about April 7, 2014 and May 15, 2014, respectively. On or about July 2, 2014, the agency mailed the grievant its third step responses to each grievance. On or about July 16, the agency mailed two letters of noncompliance to the grievant via certified mail and first-class mail, indicating that the agency had not received a response from him following the third step response. Additionally, the agency requested a response from the grievant within five workdays upon receipt of the noncompliance letters. On July 24, 2014, the grievant advised the agency, via email, that he needs the grievances for his use, that he is “going to let the one who can take care of [his] issues take care of them,” and the agency should do whatever it needs to do.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>1</sup> 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.<sup>2</sup> 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

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<sup>1</sup> *Grievance Procedure Manual* § 6.3.

<sup>2</sup> *See id.*

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.<sup>3</sup>

In this case, although the grievant responded to the agency's July 16th letters of noncompliance, he did so in a manner that does not clearly indicate his intention either to advance or conclude his grievance.<sup>4</sup> Moreover, his e-mail responses did not provide the agency with the grievance forms with his response indicated in the appropriate places.<sup>5</sup> EDR therefore orders the grievant to notify his human resources office in writing **within ten work days of the date of this ruling** that he wishes either to conclude the grievances or advance his grievances to the next step. If he does not, the agency may administratively close the grievances without any further action on its part. The grievances may be reopened only upon a timely showing by the grievant of just cause for the delay (for example, a serious illness, or other circumstances beyond the grievant's control).

EDR's rulings on matters of compliance are final and nonappealable.<sup>6</sup>



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Director  
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<sup>3</sup> 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.

<sup>4</sup> To the extent the grievant has questions regarding the grievance procedure following the third management resolution step, he is encouraged to call EDR's AdviceLine at 888-232-3842.

<sup>5</sup> See *Grievance Procedure Manual* § 3.3.

<sup>6</sup> See Va. Code §§ 2.2-1202.1(5); 2.2-3003(G).