

Issue: Compliance – Grievance Procedure (Second Step Meeting); Ruling Date: August 11, 2015; Ruling No.2016-4195; 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 2016-4195
August 11, 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 relation to his November 5, 2014 grievance with the Virginia Department of Transportation (the “agency”).

FACTS

The factual background of this grievance is set forth in EDR Ruling Number 2015-4155, EDR’s prior compliance ruling in this matter, and need not be fully repeated here.¹ In brief, the grievant filed a grievance with the agency on or about November 5, 2014, 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.” After the grievance was filed, agency management engaged in extended discussions with the grievant in an attempt to resolve his concerns.

The agency issued its first step response on or about April 28, 2015, and stated that the “[r]elief has been provided to employee as requested.” The grievant disagreed with that response and sought a compliance ruling from EDR. In EDR Ruling Number 2015-4155, EDR found that the agency had substantially complied with the grievance procedure and directed the parties to proceed with the management resolution steps. After he received the second step response, the grievant delivered a notice of noncompliance to the agency head on or about July 7, 2015, alleging that the second 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 second compliance ruling from EDR.

¹ There is an extensive factual background to the issues underlying this case beyond EDR’s prior compliance ruling in relation to this grievance. 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.

DISCUSSION

Representation of Relief

In his request for a compliance ruling, the grievant first alleges that the second step-respondent “falsely represented the requested relief in his response.” He disputes the second step-respondent’s characterization of the relief he requested as “[c]larification of [his] role and his final Employee Work Profile” and a “[r]equest for information” In the grievance, the grievant stated that he was seeking “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 for the agency to comply with its code of ethics, state and agency policies, and applicable laws “with respect to [his] employment . . . and [his] assignment.”

The grievant’s disagreement with the second step-respondent’s characterization of the relief sought is not an issue of procedural compliance with the grievance procedure in this case. Indeed, it cannot be said that the description of the relief requested from the second step response has no connection to the relief requested in the grievance. That the agency interpreted the grievant’s request for “information and documentation” for the grievant to “fully assess the agency’s actions and potential future actions” on his current and/or former position as an opportunity to provide clarification about his role and complete an Employee Work Profile (“EWP”) seems reasonable under the circumstances. If the grievant is not satisfied with the second step-respondent’s characterization of the relief requested or the overall merits of the second step response, he may advance the grievance to the next step and address his concerns at that level. Nothing in the second step-respondent’s response rises to the level of being a violation of the grievance procedure’s “Code of Conduct and Civility.”²

Sufficiency of Second Step Response

In addition, the grievant claims that “[t]he agency’s [second step] response failed to address the issues of the grievance.” 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 step-respondent is not required to respond to each and every point or factual assertion raised by the employee, he must generally address each issue raised and the requested relief.³

In addressing the sufficiency of the second step response, we note that it is somewhat difficult to ascertain the precise issues presented in the grievance. Broadly, the grievant has raised concerns with his reassignment to a different position within the agency, the possibility of his return assignment to his former position, and his employment status with the agency. The grievant also asserts that he “believe[s] that the assignment may have violated other [agency] policies, DHRM policies, and the laws of the Commonwealth of Virginia” We must also keep in mind that the procedural background of this case, as set forth in EDR Ruling Number

² See *Grievance Procedure Manual* §1.9.

³ E.g., EDR Ruling No. 2015-4155; EDR Ruling No. 2011-2869.

2015-4155, is lengthy and complex. After the grievance was filed, the parties agreed to place the grievance on hold and engaged in extensive communications about the grievant's assignment over a period of several months. Ultimately, the agency created an EWP for the grievant's position, a process in which the grievant was involved, before the grievance was taken off hold.

The second step meeting was an opportunity for the parties to discuss and clarify the issues. Based on the grievant's characterization of the second step meeting, it appears that he shared extensive information about these topics with the second step-respondent.⁴ Having reviewed the second step response in the context of the particular facts surrounding this case, we conclude that it is adequate. It addresses the issues raised, if not expressly, certainly implicitly, as well as the relief apparently sought by the grievant. Though the grievant disagrees with the second step-respondent's interpretation and characterization of the issues, it is clear that the step-respondent viewed the status of the grievant's reassignment, the agency's determination that he should be permanently reassigned to his current position, and its inability to return him to former position as the primary issues. The second step-respondent then addressed these topics in his response, admittedly very briefly, indicating that the relief the grievant is seeking, return to his former position, was not available. While the grievance record consists of extensive information provided by the grievant and the second step-respondent could have provided a more detailed response, he was not required to address each and every point presented by the grievant. Having reviewed the second step response, we conclude that it substantially complies with the requirements of the grievance procedure by addressing the issues and relief requested and advising the grievant of his procedural options.

Even if we were to assume the second step response does not comply with the grievance procedure, requiring the second step-respondent 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 second step response would provide the grievant any additional information beyond what he already knows from previous communications between the parties, the first step response, and the second step meeting, to say nothing of the discussions that took place between him, his supervisor, and other agency managers while the grievance was on hold. As a result, it is simply more efficient in this case for the grievance to advance to the next step, if the grievant is not satisfied with the second step response.⁵

⁴ At the second step meeting, the grievant appears to have asserted, for the first time in this grievance, a claim that that the agency has engaged in discrimination. The grievance procedure provides that "[o]nce the grievance is initiated, challenges to additional management actions or omissions cannot be added." *Grievance Procedure Manual* § 2.4. Although discrimination may not now be added to the grievance as a separate and distinct issue, the grievant is free to present his theory that the management actions challenged in the grievance were improper because they were tainted by a discriminatory motive.

⁵ The grievant also reiterates a concern that has already been addressed in EDR Ruling Number 2015-4155: that the agency stated in its first step response "that it was granting the relief requested in the grievance" and has failed to do so. As we explained in our previous ruling, the language used in the first step response does not appear to create an obligation for the agency to provide further relief it has not already provided. The grievant has presented no new information that would alter EDR's assessment of the first step response.

Second Step-Respondent's Authority

Finally, the grievant asserts that the agency failed to comply with the grievance procedure because the second step-respondent either “had the authority to grant the requested relief and alleged he did not” or served as a step-respondent “knowing he did not have the authority to grant the requested relief.” This claim appears to stem from the second step-respondent’s statement in his response that he was “unable to provide relief” in relation to one of the grievant’s issues. The grievant construes this statement to mean that the second step-respondent “did not have the authority to hear the grievance”

There is no indication that the second step-respondent’s authority to grant relief was deficient in any way; indeed, the grievance statutes specifically provide that “[e]ach level of management review shall have the authority to provide the employee with a remedy, subject to the agency head’s approval.”⁶ Rather than being a statement that the second step-respondent was unqualified or lacked authority to take action, it appears that he was simply stating the situation was not one for which he could offer relief based on all the facts and circumstances surrounding this case.

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 either advance the grievance to the next 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.⁷



Christopher M. Grab
Director
Office of Employment Dispute Resolution

⁶ Va. Code § 2.2-3003(D).

⁷ See *id.* §§ 2.2-1202.1(5), 2.2-3003(G).