

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: September 21, 2015; Ruling No. 2016-4235; Agency: Virginia Department of Transportation; 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 2016-4235
September 21, 2015

The Virginia Department of Transportation (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management in relation to the grievant’s July 21, 2015 grievance. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding his grievance.

FACTS

On or about July 21, 2015, the grievant initiated a grievance to challenge his receipt of a Group I Written Notice. The second step response was issued on August 13. When he received the second step response, the grievant completed the appropriate section on the Grievance Form A indicating that he wished to advance to the third step and delivered the grievance to the second step-respondent. The second step-respondent sent a copy of the grievance to the district’s Human Resources Office, and the grievant retained the original.

Having received no additional response from the grievant after August 13, on or about September 8, the agency mailed, by certified mail and regular mail, a notice of noncompliance to him.¹ In its notice of noncompliance, the agency requested a response from the grievant within five workdays of his receipt of the notice. Since more than five workdays have elapsed since the grievant presumably received notice of his alleged noncompliance and he has not yet advanced or concluded his grievance, the agency seeks a compliance ruling allowing it to administratively close the grievance.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.² That process assures that the parties first communicate with each

¹ The mailing of correspondence, properly addressed and stamped, raises a presumption of receipt of the correspondence by the addressee. *E.g.*, *Washington v. Anderson*, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988). For purposes of this ruling, therefore, we will assume the grievant received the notice of noncompliance that was sent by regular mail because there is nothing to indicate that it was improperly addressed. Though it does not alter our conclusion regarding the grievant’s receipt of the notice of noncompliance, it appears the grievant refused to accept the copy that was sent to him via certified mail.

² *Grievance Procedure Manual* § 6.3.

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.³ 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 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.⁴

The *Grievance Procedure Manual* provides that, if a grievant wishes to advance his grievance to the next step after receiving a step response, he must complete the appropriate section of the Grievance Form A and submit the grievance to the appropriate step-respondent.⁵ In this case, the grievant did not deliver the grievance to the third step-respondent, but he did complete the appropriate section of the Grievance Form A. Thereafter, it appears that the second step-respondent delivered a copy of the Grievance Form A to the agency's Human Resources Office. Based on the facts in the grievance record, we find that the grievant's actions here were sufficient to inform the agency of his desire to advance the grievance to the third step.⁶ As a result, we cannot conclude that the grievant has failed to comply with the grievance procedure at this time.

Based on EDR's review above, the grievant has sufficiently advanced the grievance to the third step but no response has yet been issued by the agency. Accordingly, the agency is directed to issue the third resolution step response **within ten workdays of the date of this ruling.**

EDR's rulings on matters of compliance are final and nonappealable.⁷



Christopher M. Grab, Director
Office of Employment Dispute Resolution

³ See *id.*

⁴ 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.

⁵ See *Grievance Procedure Manual* §§ 3.1, 3.2, 3.3, 3.4.

⁶ Though the grievance procedure does not require an agency's human resources personnel to accept a grievance on behalf of the appropriate step-respondent, doing so would be a best practice and a means of facilitating and promoting open communication between the parties.

⁷ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).