



EMILY S. ELLIOTT
DIRECTOR

COMMONWEALTH OF VIRGINIA
Department Of Human Resource Management
Office of Employment Dispute Resolution

James Monroe Building
101 N. 14th Street, 12th Floor
Richmond, Virginia 23219
Tel: (804) 225-2131
(TTY) 711

COMPLIANCE RULING

In the matter of the Virginia Department of Corrections
Ruling Number 2020-4979
September 4, 2019

The grievant seeks a compliance ruling from the Office of Employment Dispute Resolution (“EDR”)¹ at the Department of Human Resource Management on whether her June 26, 2019 grievance with the Virginia Department of Corrections (the “agency”) is in compliance with the grievance procedure. The agency has administratively closed the grievance on the ground that it seeks relief from noncompliance in an earlier grievance process. For the reasons set forth below, EDR finds that the grievance is out of compliance with the grievance procedure and may remain administratively closed.

FACTS

On or about July 5, 2018, the grievant initiated a grievance (the “First Grievance”) alleging disrespectful and harassing behavior from a manager at her facility. For reasons that are unclear from the grievance record, the third step-respondent received the First Grievance on or about September 6, 2018, yet did not issue a written response to the grievant until approximately May 23, 2019.² The First Grievance ultimately concluded with EDR’s ruling that it did not qualify for a hearing.³

On or about June 26, 2019,⁴ the grievant filed another grievance (the “Second Grievance”) taking issue with the third step-respondent’s failure to timely respond during the

¹ The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

² The grievant alleges that she did not actually receive the third step-response until May 30, 2019. In this response, the third step-respondent apologized for the delay in responding, attributing it “largely to events outside my control.” He identified actions taken in the interim that were expected to address the grievant’s concerns.

³ In its qualification ruling, EDR also determined that the grievant’s claims of noncompliance up to that point had been either waived or brought into compliance by the agency. *See* EDR Ruling No. 2019-4948.

⁴ The agency alleges that the grievant did not timely file her Second Grievance, and the parties appear to dispute the date on which the 30-calendar-day timeline for filing should begin. Because EDR concludes that the Second Grievance may be closed on other grounds, this ruling does not address the issue of timeliness.

First Grievance process. As relief, she sought a statement from the third step-respondent providing further explanation for his delay of more than eight months. In addition, she asked for the third step-respondent to adhere to applicable grievance requirements and for no one to retaliate against her for filing the Second Grievance. The Second Grievance proceeded through two management resolution steps, but on August 21, 2019, the agency advised the grievant that it had administratively closed the Second Grievance because it sought relief from alleged noncompliance. The grievant now appeals that determination.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.⁵ 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 of any noncompliance in writing and allow five workdays for the opposing party to correct it.⁶ 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, which 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. The grievance procedure does not permit employees to pursue relief from alleged agency noncompliance through another, separate grievance.⁷

Here, the Second Grievance appears to challenge compliance deficiencies that were procedurally resolved during the First Grievance, alleging that the agency's untimely responses have undermined her trust in management and in the grievance process itself.⁸ Thus, the Second Grievance appears wholly focused on seeking some form of relief from alleged agency noncompliance with the grievance procedure. A new grievance may not be used for this purpose, or to seek a more satisfactory third step-response than one the agency had already issued.⁹ For these reasons, EDR concludes that the grievance initiated on or about June 26, 2019 is out of compliance with section 2.4 of the *Grievance Procedure Manual* and will remain administratively closed.

EDR understands the grievant's legitimate frustration at a response delay of more than eight months during the First Grievance. However, as discussed above, the grievance process provides a specific process for addressing noncompliance, which, if it had been invoked in the First Grievance, could have addressed the third step-respondent's delay far earlier. 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

⁵ *Grievance Procedure Manual* § 6.3.

⁶ *See id.*

⁷ *Id.* at § 2.4.

⁸ As to the grievant's request to be free from retaliation, the record contains no suggestion that the grievant has experienced an adverse or otherwise retaliatory action in connection with her grievances at this time. However, EDR notes that such retaliation, unlike the past compliance problems at issue here, may properly be the subject of a new grievance if it occurs. *See generally* EDR Ruling No. 2019-4900.

⁹ *Grievance Procedure Manual* § 2.4. This modest limitation on appropriate subjects of grievances protects the grievance procedure's value to all parties as a path to final resolution in disputes. Relatedly, a grievance may not be used to harass or otherwise impede the efficient operations of government. *Id.*

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. To the extent the grievant has any questions about EDR's authority to address noncompliance under the grievance procedure, she should contact EDR's AdviceLine at 1-888-232-3842.

EDR's rulings on matters of compliance are final and nonappealable.¹⁰



Christopher M. Grab
Director
Office of Employment Dispute Resolution

¹⁰ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).