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COMPLIANCE AND CONSOLIDATION RULING

In the matter of Virginia Commonwealth University
Ruling Numbers 2020-4987, 2020-4988
October 1, 2019

Virginia Commonwealth University (the “University” or the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management (“DHRM”)¹ in relation to the grievant’s July 29, 2019 and September 16, 2019 grievances.

FACTS

The University issued a Group II Written Notice to the grievant on June 27, 2019 for failure to follow instructions and/or policy. On or about July 29, the grievant timely initiated a grievance with the University challenging the Written Notice.² The second step-respondent attempted to contact the grievant by email on August 6 and August 14 to schedule the second step meeting. Having received no response from the grievant, the University’s Office of Human Resources then emailed a notice of noncompliance to her on August 21. After the grievant received the notice of noncompliance, she spoke with the Office of Human Resources and was advised to contact the second step-respondent to schedule the second step meeting. The grievant appears to have taken no further action to schedule the meeting with the second step-respondent after that point.

On August 16, 2019, the University issued a second Group II Written Notice, also for failure to follow instructions and/or policy, to the grievant and terminated her based upon her

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 thirtieth calendar day from June 27, 2019 was Saturday, July 27, 2019. Section 2.2 of the *Grievance Procedure Manual* provides that, when the thirtieth calendar day “falls on a Saturday, Sunday, or legal holiday or on any day or part of a day on which the state office where the grievance is to be filed is closed during normal business hours, the grievance may be filed on the next business day that is not a Saturday, Sunday, legal holiday, or day on which the state office is closed.” In this case, therefore, the filing deadline was extended to Monday, July 29, 2019, and thus the grievance was timely filed.

accumulation of disciplinary action.³ The grievant timely submitted a grievance to the University challenging the Written Notice and her termination on September 16.⁴

The University requested a compliance ruling from EDR on September 17, 2019, seeking to administratively close both grievances. On September 18, while this ruling was pending, the grievant contacted the second step-respondent to state that she did not wish to have a face-to-face meeting with him about the substance of her July 29 grievance.

DISCUSSION

Compliance Issues

In this case, the University alleges that the grievant has not complied with the grievance procedure because (1) she did not contact the second step-respondent to schedule the second step meeting for her July 29 grievance within five workdays of receiving the University's August 21 notice of noncompliance; and (2) she did not properly submit the September 16 grievance challenging her termination to EDR, as required by the *Grievance Procedure Manual*, and did not use the correct Grievance Form A – Dismissal Grievance.

EDR finds that the grievant failed to comply with the grievance procedure by not communicating with the second step-respondent about scheduling the second step meeting for her July 29 grievance.⁵ In such a situation, EDR would typically first order a grievant to correct the noncompliance within a specified time period and, if the grievant failed to do so, allow the agency to administratively close the grievance without any further action on its part.⁶ Here, however, EDR's assessment of the noncompliance alleged in relation to the grievant's September 16 grievance challenging her termination impacts how the July 29 grievance should proceed.

The *Grievance Procedure Manual* defines “dismissals” as terminations due to formal discipline or unsatisfactory job performance, and provides that that a grievance challenging a dismissal “shall be initiated directly with [EDR] by submit[ting] a fully completed Grievance Form A – Dismissal Grievance.”⁷ The University contends that the September 16 grievance should be

³ DHRM Policy 1.60, *Standards of Conduct*, § (B)(2)(b) (stating that the issuance of “[a] second active Group II Notice normally should result in termination”).

⁴ As with the July 29, 2019 grievance, the thirtieth calendar day from August 16 fell on a weekend: Sunday, September 15. Consistent with Section 2.2 of the *Grievance Procedure Manual*, the filing deadline was thus extended to Monday, September 16, 2019, and this grievance is also timely.

⁵ See *Grievance Procedure Manual* §§ 3.2, 6.3.

⁶ E.g., EDR Ruling No. 2020-4961. 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. See *Grievance Procedure Manual* § 6.3.

⁷ *Grievance Procedure Manual* § 2.5; see Va. Code § 2.2-3003(A).

closed because the grievance did not properly initiate the grievance with EDR and used an incorrect grievance form.⁸

EDR has consistently held that a grievance initiated in a timely manner but with the wrong management representative will not bar a grievance for noncompliance.⁹ Rather, the remedy in such a situation is either for management to provide the grievance paperwork to the appropriate step-respondent or return the grievance to the grievant for submission to that step-respondent. EDR views using the wrong grievance form or mistakenly initiating a dismissal grievance with the agency, rather than EDR, as noncompliance of a similar nature that should be remedied in the same manner. Consistent with this analysis, EDR will process the September 16 grievance—which the University has provided to EDR in conjunction with this ruling—as though it had been submitted to EDR on the correct form.

Accordingly, and with the understanding that the September 16 dismissal grievance will proceed to a hearing, the University has agreed to waive the remainder of the management steps for the July 29 grievance and qualify the matter for a hearing because it challenges the issuance of formal disciplinary action (i.e., a Group II Written Notice).¹⁰ The University has also requested that EDR consolidate the grievances for a single hearing.

Consolidation

Approval by EDR in the form of a compliance ruling is required before two or more grievances may be consolidated in a single hearing. Moreover, EDR may consolidate grievances for hearing without a request from either party.¹¹ EDR strongly favors consolidation and will consolidate grievances when they involve the same parties, legal issues, policies, and/or factual background, unless there is a persuasive reason to process the grievances individually.¹²

EDR finds that consolidation of the July 29 and September 16 grievances is appropriate in this case. These grievances involve the same grievant and could share common themes, claims, and witnesses. The grievances relate to conduct by the grievant that resulted in similar disciplinary actions issued. Further, consolidation is not impracticable in this instance. Therefore, the two grievances are consolidated for a single hearing.¹³ The University is directed to request the appointment of a hearing officer for the two consolidated grievances, using the Grievance Form B, **within five workdays of receipt of this ruling.**

⁸ Although the University also contends that the September 16 grievance was untimely, as discussed above, it was submitted to the University within the appropriate time period.

⁹ *E.g.*, EDR Ruling 2013-3400; EDR Ruling No. 2011-2692; EDR Ruling No. 2007-1686; EDR Ruling No. 2006-1114; EDR Ruling No. 2001-195; EDR Ruling No. 99-007.

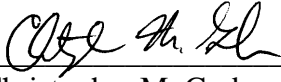
¹⁰ *Grievance Procedure Manual* § 4.1.

¹¹ *Id.* § 8.5.

¹² *See id.*

¹³ Pursuant to the fee schedule established by EDR's Hearings Program Administration policy, consolidated hearings shall be assessed a full fee for the first grievance and an additional half fee for the second grievance. *See* EDR Policy 2.01, *Hearings Program Administration*, Attach. B.

EDR's rulings on compliance are final and nonappealable.¹⁴



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¹⁴ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).