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COMPLIANCE RULING

In the matter of the Virginia Department of Transportation
Ruling Number 2020-5009
November 15, 2019

The grievant has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”)¹ at the Department of Human Resource Management (DHRM) in relation to his October 18, 2019 grievance. The grievant alleges that the Virginia Department of Transportation (the “agency”) failed to comply with the grievance procedure.

FACTS

On or about October 18, 2019, the grievant initiated a grievance with the agency. The grievant checked the box indicating that he was electing not to present the grievance to his immediate supervisor due to alleged discrimination and/or retaliation. After concluding that a signed grievance form had been submitted,² the agency provided the grievant with a letter, dated October 25, 2019, giving him the option of placing his grievance on hold for the agency’s Civil Rights Division to review his discrimination and/or retaliation claims. The grievant declined that offer. Accordingly, the grievance was provided to the second step-respondent (as the grievant had checked the box to skip his immediate supervisor). The face-to-face meeting was scheduled and held on November 4, 2019. The grievant is now awaiting a response from the second step-respondent, which has yet to be issued. The second step-respondent has been on vacation until November 15, 2019. The grievant has sought a ruling from EDR as to whether the agency was out of compliance with the grievance procedure.

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 Though not relevant to the subject of this ruling, it is worth noting that there is not a specific requirement in the grievance procedure for a grievance to be signed by the employee when it is submitted. *See Grievance Procedure Manual* § 2.4. That said, it is reasonable to request and expect there to be an indication of approval and finality of the form through a signature as part of submitting a “fully completed” Form A. *See id.* However, nothing in the grievance procedure or EDR’s interpretation thereof would require a “wet” signature on a paper copy of a grievance to be properly submitted. Accordingly, any kind of electronic signature would be appropriate.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.³ 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.⁴ 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. 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.⁵

While the grievant's request is unclear in terms of identifying the alleged agency noncompliance for which he seeks this ruling,⁶ EDR has reviewed the process of this grievance and can find no instance of noncompliance by the agency. Although it has been more than five workdays since the second step meeting on November 4 without a written response, the second step-respondent has been on approved leave. Accordingly, the five-workday period does not run because the second step-respondent has no "workdays" while on approved leave.⁷ Once he returns from vacation, his written response to the grievant will be due within the time remaining on the five-workday period.⁸

EDR's rulings on matters of compliance are final and nonappealable.⁹



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³ *Grievance Procedure Manual* § 6.3.

⁴ *See id.*

⁵ 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 to be 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.

⁶ For example, one issue the grievant appears to possibly be challenging is not receiving a written response from the agency head regarding the grievant's notification of noncompliance. However, the non-response is not an issue of noncompliance under the grievance procedure. Nothing in the grievance procedure *requires* that the agency head respond in writing to a notification of noncompliance. *See Grievance Procedure Manual* § 6.3.

⁷ *See, e.g.*, EDR Grievance FAQs No. 30, at www.dhrm.virginia.gov/employmentdisputeresolution/grievancefaqs.

⁸ *See Grievance Procedure Manual* § 3.2.

⁹ *See* Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).