

Issue: Compliance/5 day rule; Ruling Date: August 21, 2002; Ruling #2002-130;
Agency: Virginia Polytechnic Institute and State University; Outcome: Agency in
compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution
COMPLIANCE RULING OF DIRECTOR

In the matter of Virginia Polytechnic Institute and State University
Ruling Number 2002-130
August 21, 2002

ISSUE:

Did the agency violate a substantial requirement of the grievance procedure, without just cause, by failing to provide the grievant a timely written response?

RULING:

No. While the University failed to provide a timely response, based on the particular facts of this case, the agency had just cause for its delay in responding.

EXPLANATION

On November 9, 2001, the grievant initiated a grievance alleging retaliation. A compliance issue arose during the management steps, and in a June 5, 2002 ruling, this Department directed management to provide a written second step response within five workdays of receipt of the ruling.

The University's Human Resources Specialist received a copy of the ruling on June 10, 2002, and delivered a copy to the University's General Counsel the following day. The Human Resources Specialist was to forward a copy of the ruling to the second step respondent; however, during the confusion of her last week of employment with the University, she failed to do so.

On June 18, 2002, after failing to receive a response from the second step respondent, the grievant requested this Department to issue a ruling in her favor on the merits of her grievance based on the University's alleged noncompliance. When the University received notice of the grievant's June 18 ruling request, the University forwarded a copy of the June 5th ruling to the second step respondent, who issued a response on June 20th, the day that he received the ruling.

When a party has violated a substantial procedural requirement of the grievance procedure without “just cause,” the Director of this Department may render a decision against the non-compliant party on any qualifiable issue.¹ In this case, the person who was supposed to forward the grievance to the second step respondent failed to do so during the last week of her employment. The University candidly concedes that “it simply slipped through the cracks.” While it is unfortunate that this error occurred, there is no evidence that either the Human Resources Specialist’s failure to forward the ruling or the resulting late response by the second step respondent were prompted by bad faith. Rather, it appears that the mistake occurred due to simple oversight and time constraints that can arise, when, as here, a long time employee attempts to wrap up unfinished business during her last workweek. Accordingly, this Department finds that the University has shown sufficient just cause for its failure to timely respond to the grievant.

Accordingly, within 5 workdays of receipt of this ruling, the grievant must either conclude her grievance or advance it to the third step respondent. As discussed in the June 5th ruling, at the third step, the grievant must be allowed to have a fact-finding meeting. This Department’s rulings on matters of compliance are final and nonappealable.²

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¹ Va. Code § 2.2-3003 (G); *Grievance Procedure Manual* § 6.3, page 17. “Just cause” is defined as “a reason sufficiently compelling to excuse not taking a required action in the grievance process.” *Grievance Procedure Manual* § 9, page 24.

² Va. Code § 2.2-1001(5).