

Issue: Compliance/Resolution Steps; Ruling date: July 15, 2003; Ruling #2003-120; Agency: Virginia Department of Motor Vehicles; Outcome: agency out of compliance



COMMONWEALTH of VIRGINIA

Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Motor Vehicles
Ruling Number 2003-120
July 15, 2003

The agency has requested a compliance ruling regarding a grievance initiated by the grievant on June 5, 2003. The grievant has notified the agency head that the agency has violated a substantial requirement of the grievance procedure, without just cause, by denying his request that the agency designate another second-step respondent in his expedited grievance. The agency seeks a compliance ruling on who should serve as the second-step respondent.

FACTS

Until his termination, the grievant was employed as a Computer Systems Senior Engineer. On June 3, 2003, he was issued a Group III Written Notice with termination for violating security practices and protocol. The Written Notice was issued by his supervisor, the Division Manager. On June 5, 2003, the grievant initiated a grievance challenging his termination, using the expedited process.¹ On June 10, 2003, the grievant submitted a request to the agency that it designate another second-step respondent.² The agency rejected the grievant's request and requested a compliance ruling regarding who should serve as the second-step respondent.

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 this Department'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.⁴

¹ A grievance involving a termination, demotion, suspension without pay, or other action, which results in a loss of wages, may be initiated with the second-step respondent under the expedited process.

² Under the expedited process, the designated second-step respondent was the Chief Information Officer (an Assistant Commissioner). Although the grievant failed to specify the reason for his request to the agency, during this Department's investigation of this matter, the grievant stated that he believed that the designated second-step respondent had participated in the retaliatory action against him resulting in his termination.

³ *Grievance Procedure Manual*, § 6, pages 16-18.

⁴ *Grievance Procedure Manual*, § 6.3, page 17.

If the grievant believes that an agency is out of compliance, he must notify the agency head of the alleged noncompliance.

Before seeking a compliance ruling from this Department, the grievant must allow the agency five workdays after receipt of the written notice to correct any noncompliance. If after five workdays the grievant believes that the agency has failed to correct the alleged noncompliance, the grievant may request a ruling from this Department. Should this Department find that the agency violated a substantial procedural requirement and that the grievance presents a qualifiable issue, this Department may resolve the grievance in the grievant's favor unless the agency can establish just cause for its noncompliance.

Under the regular (non-expedited) grievance process, if a grievant alleges discrimination or retaliation, by an individual who would otherwise serve as the agency's designated second-step respondent, the employee may: (1) request that the agency designate another second-step respondent; or (2) waive the face-to-face meeting with the original second-step respondent and receive only a written second-step response to the grievance.⁵ Further, if the employee elects to waive the face-to-face meeting with the original second-step respondent, the employee must be allowed to meet with the third-step respondent.⁶ Since under the expedited process there is no required third resolution step, the range of options available to the parties in this scenario is more limited and is not specifically addressed in the *Grievance Procedure Manual*.

However, one of the basic requirements of the grievance procedure is that there be at least one face-to-face meeting between the employee and management during the management resolution steps.⁷ Under the rules of the expedited process, that meeting must necessarily occur at the second resolution step. In reviewing this matter, this Department has determined that in those expedited cases where the grievant alleges retaliation or discrimination by the second-step respondent (as in this case), and the agency and grievant cannot agree on an acceptable substitute, the person who would otherwise serve as the third-step respondent (were the grievance not expedited) shall become the second-step respondent.⁸ This Department's rulings on compliance are final and nonappealable.⁹

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⁵ *Grievance Procedure Manual*, § 3.2, page 9.

⁶ *Id.*

⁷ See Va. Code § 2.2-3003 (D); *Grievance Procedure Manual*, § 3.2, pages 8-9.

⁸ This requirement can be waived only if both parties agree, in writing, to waive the meeting.

⁹ Va. Code § 2.2-1001 (5).