

Issue: Compliance/challenging administrative closing of grievance by agency; Ruling Date: October 3, 2003; Ruling #2003-165; Agency: Virginia Polytechnic Institute and State University; Outcome: parties must notify each other if either party desires a face-to-face meeting within 5 days.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Virginia Polytechnic Institute and State University
Ruling Number 2003-165
October 30, 2003

The grievant has requested a compliance ruling in his December 8, 2002 grievance with Virginia Polytechnic Institute and State University (Virginia Tech or the agency). Virginia Tech administratively closed the December 8, 2002 grievance for the grievant's alleged failure to act in accordance with a July 25, 2003 ruling from the Director of this Department.

FACTS

The grievant was employed by Virginia Tech until his layoff on January 6, 2003. On December 8, 2002, the grievant initiated a grievance alleging that management's evaluation of his performance was arbitrary or capricious, discriminatory, and retaliatory. Additionally, he claimed that management violated federal and state law, and misapplied policy. The grievant sought a compliance ruling from this Department as a result of Virginia Tech's insistence on a face-to-face meeting at the second management resolution step despite the grievant's allegations of discrimination by the second-step respondent. In a July 25, 2003 ruling, this Department concluded that "by proceeding with the meeting with the second-step respondent before contesting the agency's noncompliance as provided in the grievance procedure, the grievant effectively waived his right to contest that meeting."¹ The July 25, 2003 ruling further stated:

The parties are advised that within five workdays of the receipt of this ruling, they should notify one another of any desire to hold a face-to-face meeting. Should either party desire such a meeting, then it should be held consistent with the terms of the grievance procedure and this ruling. If neither party desires a meeting, then the grievant may advance or conclude his grievance.²

¹ EDR Ruling #2003-142, page 5.

² EDR Ruling #2003-142, page 6.

The grievant claims that shortly after receipt of the July 25, 2003 ruling he and his wife left a voicemail message with Virginia Tech Personnel Services to inform the University of his continued availability for a “personal” (face-to-face) meeting if they so desired. Additionally, the grievant claims that his message informed Virginia Tech that he wished to proceed with both his November 22, 2002 and December 8, 2002 grievances but that he would await a consolidation ruling from this Department regarding the two grievances before continuing with any meeting. The University maintains that the grievant’s wife left a voicemail message for Virginia Tech Personnel Services and asserts that it was without the grievant’s knowledge. Management further contends that the message did not mention the grievant’s desire to continue with his December 8, 2002 grievance, only that the grievant had not yet heard from this Department regarding consolidation of his November 22nd and December 8th grievances. Management apparently chose not to follow up with the grievant for any clarification of the voice mail message.

DISCUSSION

The grievant argues that Virginia Tech improperly closed his December 8, 2002 grievance after he informed the University of his desire to advance it following receipt of this Department’s ruling on consolidation of that grievance with his November 22, 2002 grievance. Moreover, the grievant asserts that the University closed his December 8 grievance prior to notifying him of alleged noncompliance, as required by the grievance procedure.

Based upon the facts above, it is unclear whether the grievant notified Virginia Tech of his desire for another face-to-face meeting, although management admits that it received a voice mail message from the grievant’s wife regarding that grievance. Importantly, however, this Department’s July 25, 2003 ruling not only instructed the grievant to act, but also instructed the University to notify the grievant of any desire it had to have a face-to-face meeting. It appears that Virginia Tech failed to notify the grievant of its wishes with regard to a face-to-face meeting. As such, it would be inequitable to allow Virginia Tech to administratively close the December 8, 2002 grievance for the grievant’s alleged failure to act within five workdays of receipt of this Department’s July 25, 2003 ruling when the University was also required to take action within the same timeframe. Accordingly, this Department concludes that December 8th grievance must be reopened.

CONCLUSION

The parties are advised that within five workdays of receipt of this ruling, they must notify one another whether they wish to hold a face-to-face meeting. Should either party desire such a meeting, then it shall be held consistent with the terms of the grievance procedure. If neither party desires a meeting, then the grievant shall advance or conclude his grievance within five workdays of the final party notification to that effect.

If either party fails to comply with the terms of this ruling, the opposing party may seek a ruling from the Director of this Department regarding the noncompliance. Failure to follow the directives of this ruling without just cause could be viewed as a violation of a substantial procedural requirement of the grievance procedure which could result in either closure of the grievance or a decision against the noncomplying party on any qualifiable issue. This Department's rulings on matters of compliance are final and nonappealable, and have no bearing on the substantive merits of this case.³

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³ Va. Code § 2.2-1001 (5).