

Issue: Compliance/Grievance Procedure/30-day rule; underlying issue:
supervisor/employee conflict; Ruling Date: November 28, 2005; Ruling #2006-1184;
Agency: Virginia Department of Transportation; Outcome: grievance not in compliance



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Transportation
Ruling No. 2006-1184
November 28, 2005

The Department of Transportation (VDOT or the agency) seeks to administratively close the grievant's August 8, 2005 grievance. For the reasons set forth below, this Department concludes that the August 8, 2005 grievance is now closed for noncompliance with the grievance procedure.

FACTS

The grievant is employed as a Traffic Control Supervisor with VDOT. On August 8, 2005, the grievant initiated a grievance alleging contradictory supervisory instruction given on July 7, 2005¹ and unfair treatment. At the first management resolution step, the agency administratively closed the August 8th grievance for failure to comply with the 30-calendar day requirement of the grievance process. In the closure notification, the grievant was advised that if she desired to challenge the closure of her August 8th grievance she could do so by requesting a ruling from this Department. The grievant received the closure notification via certified mail on August 17, 2005.

DISCUSSION

The grievance procedure provides that an employee must initiate a written grievance within 30 calendar days of the date she knew or should have known of the event or action that is the basis of the grievance.² When an employee initiates a grievance beyond the 30-calendar day period without just cause, management may notify the employee, using the "Form A," that the grievance will be administratively closed due to noncompliance.³ The agency must also notify the employee on the "Form A" that the employee has the right to request a compliance ruling from the EDR Director to overturn the closing of the grievance. Any such ruling request must be made within five workdays of the notice of closure and be accompanied by a copy of the grievance record, complete

¹ The grievant claims that on July 7, 2005 she was instructed to work with only one traffic controller. The previous year, the grievant was allegedly issued a Group I Written Notice for working with only one traffic controller.

² Va. Code § 2.2-3003(C); *Grievance Procedure Manual* § 2.4.

³ *Grievance Procedure Manual* § 2.4.

with all attachments.⁴ In sum, if a grievance fails to comply with the 30-calendar day requirement (or any of the six grievance procedure initiation requirements),⁵ an agency may administratively close the grievance as long as it notifies the grievant of her right to pursue a compliance ruling from this Department. If the agency properly notifies the grievant of her right to pursue a compliance ruling and the grievant fails to request such a ruling within the mandated time period, the agency may consider the grievance administratively closed due to noncompliance without further action on its part.

Here, the agency notified the grievant that her grievance was being administratively closed due to its untimely initiation on August 8, and that she had five workdays to request a ruling from this Department to overturn the administrative closure. Because the agency cited the grievant with the untimely initiation of her grievance (a violation of the grievance procedure for which the grievant cannot “come back into compliance”), the agency could administratively close the grievance without seeking an order from this Department. Further, the grievance remains closed because the grievant did not request a timely ruling from this Department in an attempt to overturn the closure.

For clarification purposes, we note that an agency cannot administratively close a grievance in this same manner if the grievant has failed to comply with the other procedural requirements of the grievance process (e.g., those for which a grievant can “come back into compliance” such as the five workday rules).⁶ Rather, in such a case, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.⁷ If the opposing party fails to correct the noncompliance within this five-day period, the party claiming noncompliance may seek a compliance ruling from the EDR Director, who 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 its delay in conforming to EDR’s order.⁸ If the grievant is the noncompliant party and fails to correct the noncompliance within the time period specified by EDR, the agency may administratively close the grievance. The grievance

⁴ *Id.*

⁵ *Id.*

⁶ See *Grievance Procedure Manual* §§ 3.1 - 3.3 and § 4.2.

⁷ *Grievance Procedure Manual*, § 6.3.

⁸ While in cases of substantial noncompliance with procedural rules the grievance statutes grant the EDR Director the authority to render a decision on a qualifiable issue against a noncompliant party, this Department favors having grievances decided on the merits rather than procedural violations. Thus, the EDR Director will *typically* order noncompliance corrected before rendering a decision against a noncompliant party. However, where a party’s noncompliance appears driven by bad faith or a gross disregard of the grievance procedure, this Department will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

November 28, 2005

Ruling #2006-1184

Page 4

may be reopened only upon a timely showing by the grievant of just cause for the delay (for example, a serious illness, or other circumstances beyond the grievant's control).

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

Claudia T. Farr
Director

Jennifer S.C. Alger
EDR Consultant

⁹ See Va. Code § 2.2-1001(5).