

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: November 21, 2008; Ruling #2009-2147; Agency: Norfolk State University; Outcome: Grievant Not In Compliance.



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

**COMPLIANCE RULING OF DIRECTOR**

In the matter of the Norfolk State University  
Ruling No. 2009-2147  
November 21, 2008

Norfolk State University (NSU or the University) seeks to administratively close the grievant's August 24, 2008 grievance.<sup>1</sup> The University alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding his grievance.

FACTS

The grievant initiated his expedited grievance to challenge Written Notices that led to the termination of his employment. The University asserts that it made repeated efforts to set up a face-to-face fact finding meeting with the grievant but he has not responded. Accordingly, the University mailed the grievant a notice of noncompliance on September 3, 2008.<sup>2</sup> Because more than five workdays have elapsed since the notice of noncompliance letter, and the grievant has apparently not yet cured the noncompliance, the University seeks a compliance ruling.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.<sup>3</sup> That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily, without this Department's (EDR'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.<sup>4</sup> 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)

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<sup>1</sup> The grievance is dated August 24, 2008 but the University asserts that it received the grievance on August 25, 2008.

<sup>2</sup> The mailing of correspondence, properly addressed and stamped, raises a presumption of receipt of the correspondence by the addressee. *E.g.*, *Washington v. Anderson*, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988).

<sup>3</sup> *Grievance Procedure Manual* § 6.3.

<sup>4</sup> *Id.*

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.<sup>5</sup>

By failing to either (1) arrange to have a second step meeting, or (2) conclude his grievance, the grievant has failed to comply with the grievance procedure. Moreover, the University appears to have notified the grievant of his noncompliance, but the grievant has not corrected it.

As the grievant has apparently failed to advance or conclude his grievance in a timely manner, he has failed to comply with the grievance procedure.<sup>6</sup> This Department therefore orders the grievant to correct his noncompliance **within ten workdays of the date of this ruling** by notifying his University human resources office in writing that he wishes to either (1) conclude his grievance or (2) wishes to meet with the University at the second step meeting. If he does neither, the University may administratively close the grievance without any further action on its part. The grievance 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.<sup>7</sup>

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Claudia T. Farr  
Director

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<sup>5</sup> 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.

<sup>6</sup> See *Grievance Procedure Manual* § 3.2.

<sup>7</sup> See Va. Code § 2.2-1001(5), 2.2-3003(G).