

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: December 29, 2009; Ruling #2009-2485; Agency: Virginia Department of Transportation; Outcome: Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of Department of Transportation
Ruling No. 2010-2485
December 29, 2009

The Department of Transportation (VDOT or the agency) seeks to administratively close the grievant's August 27, 2009 grievance. The agency 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

In his August 27, 2009 grievance, the grievant challenges a Group I Written Notice. The third step respondent replied to the grievance on or about October 9, 2009 via U.S. First Class and Certified Mail. According to the agency, the grievant never advanced his grievance. Because of the grievant's purported failure to advance his grievance, the agency apparently sent the grievant, on or about November 17, 2009, a notice of noncompliance that appears to have been received on November 21, 2009.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.¹ 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.² 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,

¹ *Grievance Procedure Manual* § 6.3.

² *Id.*

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.³

As the grievant has apparently failed to advance or conclude his grievance in a timely manner, he appears to have failed to comply with the grievance procedure. This Department therefore orders the grievant to correct this noncompliance **within ten work days of the date of this ruling** by notifying the agency's human resources office in writing that he wishes to either conclude the grievance or advance his grievance to the agency head for a qualification determination.⁴ If he does not, the agency 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.⁵

Claudia T. Farr
Director

³ 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.

⁴ See Grievance Procedure Manual § 3.3.

⁵ See Va. Code § 2.2-1001(5); 2.2-3003(G).