

Issue: Compliance – Grievance Procedure (other issue); Ruling Date: September 29, 2009; Ruling #2010-2430; Agency: Virginia Department of Transportation; Outcome: Agency In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Transportation
Ruling No. 2010-2430
September 29, 2009

The grievant has sought a compliance ruling concerning her April 10, 2009 grievance with the Department of Transportation (the agency). The grievant requests a ruling on the merits of her grievance due to the agency's alleged noncompliance and bad faith in handling this grievance.

FACTS

The grievant initiated her expedited grievance, dated April 10, 2009, to challenge various issues, including her termination. After an initial response by the second step-respondent, and a ruling from this Department,¹ a rescheduled second step meeting occurred on August 19, 2009. The second step respondent issued his new response on August 26, 2009. The grievant argues that the agency's new second step response is noncompliant with the grievance procedure in that it fails to consider additional facts presented at the meeting. The grievant also argues the agency has failed to comply with the grievance procedure by 1) failing to grant her an extension for the initial second step meeting, which led to an EDR ruling; and 2) sending letters requesting the return of the grievance package, which also indicated the grievance would be closed if she did not return them. Due to these alleged instances of noncompliance, the grievant seeks a ruling on the merits of her grievance.

DISCUSSION

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,² 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

¹ See EDR Ruling No. 2010-2360.

² See Va. Code § 2.2-3003(G).

of the grievance procedure, this Department will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

The grievant asserts various instances of alleged substantial noncompliance by the agency. These issues include the second step-respondent's alleged failure to consider certain facts, the agency's refusal to grant her an extension, and the agency's notices of noncompliance concerning the return of the grievance package. Each of these matters is addressed generally below.³

Revised Second Step Response

Under the grievance procedure, the second step-respondent must provide a written response within five workdays of the second step meeting. The written response must address the issues and relief requested and should notify the employee of his or her procedural options.⁴ While the second step-respondent is not required to respond to each and every point or factual assertion raised by the employee, the respondent must address each issue raised and the requested relief.

The grievant claims that the second step-respondent did not address additional evidence and points raised by the grievant through submissions and at the second step meeting. However, the response does respond to the issues generally raised on the Grievance Form A. While the second step-respondent may not have discussed every point or factual assertion raised by the grievant, it cannot be said that the response to these grievance issues does not comply with the requirements of the grievance procedure. The grievant may disagree with the agency's determinations, but that is not sufficient to find that the agency has failed to address the issues and the relief requested in the grievance. There is no basis to find that the second step response is noncompliant with the grievance procedure.

Failure to Grant Extension

The grievant asserts that the agency's refusal of her request for an extension to attend the initial second step meeting was noncompliance. This issue was addressed and remedied by EDR Ruling No. 2010-2360. As such, there is no basis for further relief for this alleged instance of noncompliance, to the extent it can be described as such.

Notices of Noncompliance

³ The grievant has also raised an issue concerning the earlier closure of another of her grievances. That matter was addressed in EDR Ruling No. 2009-2286. An additional copy of that ruling will be provided to the grievant with the mailing of this ruling. The grievant's letter to this Department also appeared to include a request for a delivery card, possibly in the possession of the agency, concerning the transmission of paperwork regarding that grievance. If the grievant still seeks a copy of that card, the request should be directed to the agency, not this Department.

⁴ *Grievance Procedure Manual* § 3.2.

It would appear reasonable that the agency included in the notices of noncompliance (sent to the grievant for her to return the grievance package) that her failure to do so could result in the closure of her grievance. Failing to comply with the grievance procedure can have that result.⁵ Moreover, even if there had been a mistake about who had the grievance package, these issues have been addressed and rendered moot by EDR Ruling No. 2010-2360. Further, it would not appear that the agency's letters demonstrate any bad faith.

Upon considering the points raised by the grievant, this Department cannot conclude that the agency's conduct substantially violated the grievance procedure, much less that the agency was motivated by bad faith or a gross disregard of the grievance procedure. Automatic award of relief on the merits is not warranted at this time.

This Department's rulings on matters of compliance are final and nonappealable.⁶

Claudia T. Farr
Director

⁵ See, e.g., Grievance FAQs # 29, at <http://www.edr.virginia.gov/faqs.htm>.

⁶ See Va. Code §§ 2.2-1001(5), 2.2-3003(G).