

Issue: Compliance – Grievance Procedure (Second Step Meeting); Ruling Date: March 26, 2010; Ruling #2010-2576; Agency: Department of Motor Vehicles; Outcome: Grievant Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Motor Vehicles
Ruling No. 2010-2576
March 26, 2010

The Department of Motor Vehicles (the agency) seeks a compliance ruling regarding the grievant's failure to appear for the scheduled second step meeting and respond to the agency regarding the scheduling of the meeting. The agency seeks permission to close the grievance due to the grievant's alleged noncompliance.

FACTS

In EDR Ruling No. 2010-2543, this Department ordered both the grievant and the agency to work together to set a date for the second step meeting. The agency scheduled the meeting for March 18, 2010, which was communicated by phone, e-mail, and mail to the grievant with a request to contact the agency if the meeting date was not convenient. According to the agency, the grievant did not respond to the agency and did not appear for the second step meeting on March 18, 2010.

DISCUSSION

The agency alleges that the grievant has violated this Department's order in EDR Ruling No. 2010-2543 by not responding to the agency's communications for scheduling the meeting and not attending the meeting on March 18, 2010. Although the EDR ruling did not expressly order the grievant to attend the second step meeting, certainly such attendance was implicit in the ordered scheduling of the meeting.¹ Further, nonresponsiveness by parties to a grievance does not support the purpose of the grievance process to resolve workplace disputes fairly and promptly.²

¹ Absent an agreement between the parties to waive the meeting, the grievance procedure also generally requires both parties to attend the second step meeting. See *Grievance Procedure Manual* § 3.2; EDR Ruling No. 2006-1132 ("Under the grievance procedure, management and employees generally have an equal interest in and entitlement to at least one face-to-face meeting during the management resolution steps."). Further, Number 13 of the Frequently Asked Grievance Questions on EDR's website provides that "any party to a grievance has a right to insist on the second-step meeting, and if either party demands it, then the second-step meeting generally must take place." Frequently Asked Grievance Questions, No. 13, <http://www.edr.virginia.gov/faqs.htm>.

² See *Grievance Procedure Manual* § 1.1.

As the grievant has apparently failed to appear for the scheduled second step meeting and has not contacted the agency to further advance or conclude her grievance, the grievant has not complied with EDR Ruling No. 2010-2543 and the grievance procedure. This Department therefore orders the grievant to correct this noncompliance **within ten workdays of the date of this ruling** by contacting the agency's human resources office in writing that she wishes to either conclude the grievance or continue with the scheduling of the second step meeting.³ If the grievant does not do so, 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.⁴

Claudia T. Farr
Director

³ The grievant has not previously been found to be noncompliant with the grievance process in this case. As such, providing an opportunity to cure the noncompliance here is consistent with EDR's preference for having grievances decided on the merits rather than procedural violations. 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 Va. Code § 2.2-1001(5), 2.2-3003(G).