

Issue: Compliance – Grievance Procedure (5-Day Rule); Ruling Date: May 3, 2010;
Ruling #2010-2622; Agency: Virginia Department of Transportation; Outcome:
Agency Not In Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

COMPLIANCE RULING OF DIRECTOR

In the matter of the Department of Transportation
Ruling No. 2010-2622
May 3, 2010

The grievant seeks a compliance ruling regarding her grievance with the Department of Transportation (“agency”). The grievant alleges that the agency has failed to comply with the time limits set forth in the grievance procedure for responding to her grievance.

FACTS

The grievant states that she had her second step meeting with the agency on April 1, 2010 and that the second step response was due on April 8, 2010. The grievant asserts that she agreed to extend the deadline for the second step response until April 13, 2010. The grievant further claims that she refused to grant an additional requested extension (until April 22, 2010) and that, on April 15, 2010, she notified the agency of its noncompliance in failing to timely provide the second step response. The grievant states that despite her refusal to grant the further extension, the agency did not provide a response until April 23, 2010, the same day that the grievant requested this compliance ruling.

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)

¹ *Grievance Procedure Manual* § 6.3.

² *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 its delay in conforming to EDR's order.

In this case, the agency has now provided a response rendering moot any issue of noncompliance for its delay in responding. Generally, relatively minor delays would not constitute substantial noncompliance with the grievance procedure.³ This Department finds no indication of bad faith on the part of the agency warranting relief on the merits. However, while the agency's actions in this case do not warrant a finding on the merits at this time, this Department notes that the grievance process is intended to provide the parties with an expeditious way to resolve workplace issues and therefore adherence to the five workday rule is crucial. The noncompliance provisions of the grievance process are not, and were never intended to be, a mechanism to allow the parties to extend the five workday rule. As such, this Department does not condone any party failing to comply with the time limits set forth in the grievance process and strongly cautions that repeated disregard for the five workday rule could result in a decision against the noncompliant party.⁴

This Department's rulings on matters of compliance are final and nonappealable.⁵

Claudia T. Farr
Director

³ See, e.g., EDR Ruling Nos. 2010-2536; 2009-2150, 2009-2178. 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. See Va. Code § 2.2-3003(G). 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, e.g., EDR Ruling Nos. 2003-049 and 2003-053, 2007-1470, 2007-1420.

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