



JANET L. LAWSON
DIRECTOR

COMMONWEALTH OF VIRGINIA
Department Of Human Resource Management
Office of Employment Dispute Resolution

James Monroe Building
101 N. 14th Street, 12th Floor
Richmond, Virginia 23219
Tel: (804) 225-2131
(TTY) 711

COMPLIANCE RULING

In the matter of the Virginia Department of Transportation
Ruling Number 2025-5785
November 7, 2024

The Virginia Department of Transportation (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”) at the Department of Human Resource Management in relation to the grievant’s September 17, 2024 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 the grievance.

FACTS

On September 17, 2024, the grievant initiated a grievance with the agency. Because the grievant alleged retaliatory/discriminatory behavior by the first and second-step respondents, the grievant waived those two respondents and initiated the grievance with the third-step respondent. The agency sent the grievant its third step response via email on October 1, 2024. Having received no further response from the grievant, the agency then emailed the grievant notifying him of his noncompliance on October 11, 2024. In its email, the agency requested a response from the grievant within five calendar days of receipt of the email, or close of business on October 16. As the grievant apparently did not respond to the agency’s notice by October 16 indicating his intent to advance or conclude the grievance, the agency seeks a compliance ruling allowing it to administratively close the grievance.

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 problems voluntarily, without 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 EDR, 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

¹ *Grievance Procedure Manual* § 6.3.

² *See id.*

qualifiable issue. When EDR finds that either party to a grievance is in noncompliance, its ruling will (i) 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.³

In this case, the grievant appears to have failed to advance or conclude the grievance within five workdays of receiving the agency's third resolution step response, as required by the grievance procedure.⁴ Moreover, the grievant has not advanced or concluded the grievance since receiving the agency's notice of noncompliance. While the agency requested that the grievant notify it of his intention to advance or conclude the grievance within five *calendar* days of its notice of noncompliance, as opposed to the proper deadline of five workdays, this error has no material effect on the outcome of this ruling as the grievant still appears not to have responded to the date of this ruling.

As the grievant has apparently failed to advance or conclude the grievance in a timely manner, the grievant has failed to comply with the grievance procedure. EDR therefore orders the grievant to correct the noncompliance **within ten workdays of the date of this ruling** by notifying the agency's human resources office in writing that the grievant wishes to either conclude the grievance or proceed to the qualification step. If the grievant 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).

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

Christopher M. Grath
Director
Office of Employment Dispute Resolution

³ Although the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party in cases of substantial noncompliance with procedural rules, EDR favors having grievances decided on the merits rather than procedural violations. Thus, EDR 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, EDR will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

⁴ See *Grievance Procedure Manual* §§ 3.3, 3.4.

⁵ See Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).