



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P.O. Box 77960
Washington, DC 20013

[REDACTED]
Fred M.,¹
Complainant,

v.

Megan J. Brennan,
Postmaster General,
United States Postal Service
(Pacific Area),
Agency.

Appeal No. 0120172563

Agency No. 1F-904-0008-01

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision by the Agency dated June 27, 2017, finding no breach of a settlement agreement. We REVERSE the Agency's decision finding no breach of the settlement agreement and we REMAND the complaint for processing.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Transportation Supervisor, EAS-17 at the Agency's Los Angeles Network Distribution Center in Bell, California. On February 5, 2002, Complainant and the Agency entered into a settlement agreement regarding an EEO complaint filed by Complainant. The settlement agreement provided, in pertinent part, that:

1. In exchange for the promises made by the Agency, U.S. Postal Service in paragraph 2 of the Agreement, the Complainant, . . . , agrees not to institute a lawsuit under Title VII of the Civil Rights Act of 1965, as amended, and the Civil Rights Act of 1964; the Rehabilitation Act of 1973 and the Age Discrimination in Employment Act of 1967. The Complainant hereby withdraws his complaint in, USPS Case No. 1F-904-0008-01, EEOC Case No. 340-AI-3526X.

¹ This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

2. In exchange for the promises of the Complainant contained in paragraph 1 of this Agreement, the Agency agrees that:
 - A. The Complainant will be treated fairly and in accordance with postal rules and regulations in matters involving promotions and merit increases.

By letter to the Agency dated May 9, 2017, Complainant alleged that the Agency was in breach of the settlement agreement. Complainant alleged that he has not been treated fairly for promotions and merit increases. In its June 27, 2017 decision, the Agency concluded that Complainant's breach allegations were untimely raised.

ANALYSIS AND FINDINGS

EEOC Regulation 29 C.F.R. § 1614.504(a) provides that any settlement agreement knowingly and voluntarily agreed to by the parties, reached at any stage of the complaint process, shall be binding on both parties. The Commission has held that a settlement agreement constitutes a contract between the employee and the Agency, to which ordinary rules of contract construction apply. See Complainant v. Dep't of Def., EEOC Request No. 05960032 (December 9, 1996). The Commission has further held that it is the intent of the parties as expressed in the contract, not some unexpressed intention, that controls the contract's construction. Eggleston v. Dep't of Veterans Affairs, EEOC Request No. 05900795 (August 23, 1990). In ascertaining the intent of the parties with regard to the terms of a settlement agreement, the Commission has generally relied on the plain meaning rule. See Hyon O v. U.S. Postal Serv., EEOC Request No. 05910787 (December 2, 1991). This rule states that if the writing appears to be plain and unambiguous on its face, its meaning must be determined from the four corners of the instrument without resort to extrinsic evidence of any nature. See Montgomery Elevator Co. v. Building Eng'g Servs. Co., 730 F.2d 377 (5th Cir. 1984).

Further, the adequacy or fairness of the consideration in a settlement agreement generally is not at issue, as long as some legal detriment is incurred as part of the bargain. However, when one of the contracting parties incurs no legal detriment, the settlement agreement will be set aside for lack of consideration. See Complainant v. USPS, EEOC Appeal No. 01A44928 (Mar. 4, 2005).

On review, the Commission finds the February 5, 2002 settlement agreement is unenforceable because it is vague and therefore lacks consideration. The record reveals that while the settlement agreement obligated Complainant to withdraw his EEO complaint, the agreement merely obligated the Agency to adhere to standard procedure of fairness and compliance with postal rules. There was no other purported consideration in the agreement for Complainant. The agency was already obligated to follow its own rules and not discriminate. Furthermore, such a requirement of "fairness" is simply too vague to be enforced. Consequently, we find that the settlement agreement is void for lack of consideration and therefore we shall order the Agency to reinstate Complainant's underlying complaint (Agency No. IF-904-0008-01) for further processing.

CONCLUSION

We REVERSE the Agency's decision. The settlement agreement of February 5, 2002 is void and the complaint is REMANDED to the Agency for further processing in accordance with this decision and the ORDER herein.

ORDER

The Agency shall resume processing of Complainant's complaint (Agency No. IF-904-0008-01) from the point processing ceased within 30 days of the date this decision is issued. The Agency shall acknowledge in writing to Complainant that it has reinstated and resumed processing of his complaint. The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0617)

Compliance with the Commission's corrective action is mandatory. The Agency shall submit its compliance report **within thirty (30) calendar days** of the completion of all ordered corrective action. The report shall be in the digital format required by the Commission, and submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The Agency's report must contain supporting documentation, and the Agency must send a copy of all submissions to the Complainant. If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the Agency.

Requests to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title.

Failure to do so may result in the dismissal of your case in court. “Agency” or “department” means the national organization, and not the local office, facility or department in which you work. **Filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant’s Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:

A handwritten signature in blue ink that reads "Carlton M. Hadden". The signature is written in a cursive style and is positioned above a horizontal line.

Carlton M. Hadden, Director
Office of Federal Operations

November 8, 2018

Date