



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

████████████████████
Shanti N.,¹
Complainant,

v.

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

Appeal No. 0120180212

Agency No. 4G390003117

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision (FAD) by the Agency dated September 26, 2017, finding that it was in compliance with the terms of the settlement agreement into which the parties entered. See 29 C.F.R. § 1614.402; 29 C.F.R. § 1614.504(b); and 29 C.F.R. § 1614.405.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Rural Carrier at the Agency's Post Office in Oxford, Mississippi.

Believing that the Agency subjected her to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process. On April 12, 2017, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement provided, in pertinent part, that:

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.

Management agrees to have AMS audit/review completed on Complainant's route, Route 19. The audit will be completed by someone outside Complainant's current work location. Management agrees to correct any discrepancies, if found, on the 4002 form, including the mileage. Should the audit reflect the Complainant is due a monetary adjustment, management will complete the necessary paperwork. If an adjustment is needed, Complainant should allow 6 to 8 weeks for processing, once all required paperwork is completed.

Complainant submitted an Information for Pre-Complaint Counseling (PS Form 2564-A) to the Agency, dated May 30, 2017, alleging that the Agency was in breach of the settlement agreement. She alleged that the Agency denied her request for annual leave, which was submitted prior to May 12th on a 3971 form. There were two carriers (RCAs) who could have worked. She also said that white employees are allowed leave whether it is requested with a 3971 form or not. She was informed that she needed to take off approximately 42 days and did not understand why as white employees have not been informed that they need to take off a large number of work days. Also, the AMS review had not been completed or she had not been informed of the results.

In its September 26, 2017 FAD, the Agency concluded that it was not in breach of the agreement, noting that Complainant had confirmed the AMS audit had been conducted and the route adjustment implemented.

The Agency noted that Complainant had concerns regarding, and did not agree with, the effective date of the route adjustment and reported she had not received the monetary adjustment based on the audit findings. The Agency explained that Complainant's route was initially changed to a J43 route, effective August 6, 2016. Upon finalizing the route adjustment, Complainant's route became a K42 route, effective May 27, 2017. Complainant did not agree with the May 27, 2017 effective date of the route change. Complainant and her representative were informed that an earlier effective date could result in an overpayment, which would have to be repaid. Complainant and her representative requested, and the Agency agreed, to an effective date of October 15, 2016. The adjustment paper work was completed by the Agency and submitted for processing on August 18, 2017. It should be reflected on Complainant's pay period 20 paycheck, to be issued on October 6, 2017.

The Agency also noted that the issues Complainant raised regarding the denial of leave and requiring her to take 42 days of leave are being addressed in a separate complaint.

The instant appeal followed. On appeal, Complainant has not submitted a statement or brief in support of her appeal.

ANALYSIS

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 Herrington 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. See 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).

Under the general principles of contract law, a party may avoid an otherwise valid contract because of a mistake. One who attacks a settlement agreement bears the burden of showing fraud or mutual mistake. See Asberry v. U.S. Postal Serv., 692 F. 1378, 1380 (Fed Cir. 1982). The party attempting to avoid the contract must prove that: (1) the mistake related to a basic assumption upon which the contract was made; (2) the mistake had a material effect upon the agreement, and (3) the mistaken parties did not assume or legally bear the risk as to the mistaken fact. Restatement (Second) of Contracts 152, see also Skyline Corp. v. Nat'l Labor Relations Bd., 613 F.2d 1328 (5th Cir. 1980).

In the instant case, the Agency conducted the AMS audit and route adjustments as provided in the settlement agreement. However, because of the effective date of the route adjustment, Complainant was not due a back payment. Instead, she owed the Agency.

Emails between Agency employees, dated from August 18, 2017 to August 24, 2017, indicate that the EEO specialist was not aware there was a possible overpayment. Instead, she and Complainant were told there would be a significant back payment due to Complainant. In an email dated August 23, 2017, the EEO specialist asked the accountant to hold on finalizing the processing until after she could discuss this with all the parties involved to see if they wished to re-negotiate. An email from a manager, dated August 24, 2017, indicates that Complainant would be making approximately \$1500 less under the proposed settlement. He asked the EEO specialist to advise him, the accountant, and others involved after she discussed the matter with all parties.

A memorandum from the Agency's EEO specialist, dated December 8, 2017 provides, in part, that prior to the adjustments being made, the Agency attempted to negotiate the effective date to avoid a possible overpayment to Complainant, but this was not successful. The route adjustments were implemented retroactively to the date Complainant wanted, which was October 15, 2016 instead of May 27, 2017, which would have avoided the overpayment. As a result, Complainant owed the Agency money.

We find that both parties to the settlement agreement acted under a mutual mistake as to what they assumed would be the result of the audit and route adjustment. Both parties entered into the agreement based on the assumption that the result would be a back payment to Complainant. However, after the audit was performed and the adjustments made, Complainant owed the Agency. This was a material effect upon the agreement. There is no evidence that either party knew when the settlement agreement was executed that this was a possible outcome and there is no indication that Complainant assumed this risk. Therefore, we find the settlement agreement is void for mutual mistake.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we void the April 12, 2017 settlement agreement and REMAND the underlying EEO complaint for further processing in according with this decision and the ORDER below.

ORDER

The Agency is ordered to process the remanded claims from the point where processing ceased in accordance with 29 C.F.R. § Part 1614. The Agency shall acknowledge to the Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued. If Complainant has not yet filed a formal complaint, the Agency shall permit her to do so and accept the complaint for investigation. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, a copy of complainant's request for a FAD, or a statement from the agency that it did not receive a response from complainant by the end of the election period.

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).

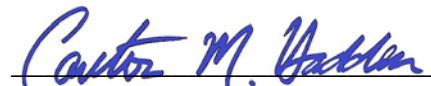
COMPLAINANT’S RIGHT TO FILE A CIVIL ACTION (R0610)

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:



Carlton M. Hadden, Director
Office of Federal Operations

April 10, 2019
Date