



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

[REDACTED]  
Cortez J.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 0120182495

Agency No. 1E853000613

EEOC Case No. 540-2014-00124X

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision (FAD) by the Agency, dated June 13, 2018, 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 compliance action, Complainant worked as an Electronic Technician at the Agency's Phoenix P & DC facility in Phoenix, Arizona.

On January 29, 2016, Complainant and the Agency entered into a settlement agreement to resolve an EEO matter. The settlement agreement provided, in pertinent part, that:

- (1) The parties agree to settle all disputes and claims which may exist between them that have been raised or could have been raised by the date of the execution of this Agreement.

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<sup>1</sup> 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) The Postal Service strives to provide a workplace wherein employees are treated with dignity and respect by management and co-workers alike. Management is committed to ensuring a workplace that is free of discrimination and to fostering a work climate in which all employees may participate and contribute. This applies to [Complainant].
- (3) The Maintenance Technical Support Center (MTSC) issues a Notice of Intent (NOI) for the ET-11 position when the MTSC determines an ET-11 position should be filled. If the NOI is posted in Phoenix and prior to any promotion, promoted NSTs have the right of bid for the ET-11 position (tours and days off). Following that, the approved vacant ET-11 position is filled by the top person on the ET-11 Personal Eligibility Roster (PER). If [Complainant] is the first employee on the PER at the time a NOI is posted in Phoenix for an ET-11 position, [Complainant] will be promoted to that position according to these rules. Further, it is understood by the Parties that [Complainant's] current bid position will remain as permitted and governed by the bargaining unit agreement. It is agreed that [Complainant's] days off and start / end times will remain in effect unless all Electronic Technicians are removed from his current tour, or should he elect to bid on a different position.
- (4) It is understood by [Complainant] that this Agreement is full and complete settlement of all outstanding EEO complaints, lawsuits and appeals filed by him or that could have been filed by him relating to any matters, specifically withdrawing EEOC Case No. 540-2014-00124X. Complainant specifically agrees that, should he believe the Agency breached this agreement, he will notify either the Human Resources Manager or Plant Manager of the Phoenix District within 30 days of the alleged breach to report the alleged breach and to provide an opportunity for review of such breach, prior to filing a breach action before the EEOC...[Complainant] understands that he continues to have the right to file a timely EEO complaint or grievance regarding concerns he has with his employment.
- (5) Both Parties understand that a copy of this Agreement will be retained in [Complainant's] Official Personnel File (OPF).

By letter to the Agency dated April 10, 2018, Complainant alleged that the Agency was in breach of the settlement agreement, and requested that the Agency implement its terms. Specifically, Complainant alleged that the Agency treated him negatively, and with disrespect, after he was part of a group that notified the Phoenix Maintenance Management of a DBCS Machine Safety issue. He stated that he “was treated with retaliation and disparity of treatment” and in violation of Provision 1 of the Settlement Agreement. Complainant stated that he is classified as a disabled veteran (30% or more).

He was diagnosed with Post Traumatic Stress Disorder (PTSD) from the First Gulf War and indicated that his PTSD is “FMLA protected.” He asserted that he should not have been treated negatively for reporting a safety issue and should not have been disrespected under the terms of the Agreement. To “cover his bases” and to protect himself, Complainant filed this breach claim, along with a grievance and a new EEO complaint.

Further, the record includes an unsigned May 17, 2018 Agency notice to Complainant, subject “Cancellation of Request to Initiate EEO Counseling. The notification informed Complainant that the Agency was closing his request for counseling regarding his new claims of discrimination. Complainant offers this as another example of the ongoing disrespect. Complainant is seeking specific enforcement in the form of “peace of mind” and to finish his USPS career without stress or hassle.” He stated in his “personal (PTSD) situation, there are things more precious than money . . . “the Quiet Mind.”

#### Agency Decision

In its June 13, 2018 FAD, the Agency stated that any alleged breach prior to March 11, 2018 should be dismissed as untimely. The Agency then concluded that the Agreement provision (stating “the Postal Service strives to provide a work place with the dignity and respect”) is void for lack of consideration. The Agency reasoned that the language did not state that Complainant, *as an individual*, will be treated with dignity and respect. Although the Agency found this provision void, the Agency concluded that the remaining provision remained intact. The Agency, however, did not make a specific determination as to whether it had complied with the rest of the Agreement provisions.

This appeal followed. On appeal, Complainant provides documentation of his claim that he was “singled out for” for adverse disrespectful treatment, that management was subjecting him to heightened observation and requiring him to work under dangerous conditions, even after he reported the matters to management. He also asserts that the VA is supposed to be committed to the protection of disabled veterans and these actions are contrary to the stated VA mission, where safety is a priority.

In response, the Agency argues that the breach claim was untimely because it was not made within 30 days of the claimed breach. The Agency also states that no part of the Settlement Agreement has been breached and asks that Complainant’s appeal be dismissed with prejudice.

#### 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. 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).

Generally, the adequacy or fairness of the consideration in a settlement agreement 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 MacNair v. United States Postal Service, EEOC Appeal No. 01964653 (July 1, 1997). When a settlement agreement lacks adequate consideration, it is unenforceable. See Collins v. United States Postal Service, EEOC Request No. 05900082 (April 26, 1990). Also, a settlement agreement that is too vague to enforce is invalid. See Bibb-Merritt v. United States Postal Service, EEOC Appeal No. 0120072689 (November 13, 2009).

Here, we find the instant settlement agreement void for lack of consideration and vagueness. The Agency promised Complainant nothing more in exchange for settling his EEO complaint than what he was already entitled to either as an Agency employee (provision 2 – treated with respect and dignity) or under the negotiated collective bargaining agreement (provision 3 – process for filling the ET-11 position). As such we find it appropriate to void the agreement and remand the underlying complaint for continued processing at the point where it ceased due to the settlement.<sup>2</sup>

In addition, we note that Complainant stated that the Agency cancelled his request for EEO counseling on his new claims (which occurred subsequent to the execution of the settlement agreement). The Agency, on the other hand, represents that Complainant's concerns are being addressed in a new EEO complaint. To the extent that Complainant wishes to address new claims of discrimination or retaliation that occurred after the execution of the settlement agreement but have not been made part of a new complaint, he should initiate EEO counseling with the Agency, which the Agency must provide.

#### CONCLUSION

We conclude that the January 29, 2016 settlement agreement is void for lack of consideration, and REMAND the matter in accordance with the ORDER below.

#### ORDER

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<sup>2</sup> It appears from the record that the complaint was settled after Complainant requested an EEOC hearing. EEOC Hearing No. 540-2014-00124X was dismissed due to settlement.

**Within thirty (30) calendar days** of the date this decision becomes final, the Agency is ordered to notify Complainant that the January 29, 2016 settlement agreement has been voided by this decision and that the Agency will resume the processing of his underlying complaint from the point it was settled. During this same 30-day time frame, the Agency shall reissue Complainant a copy of the investigative file and notify him of his appropriate rights to request a hearing before an EEOC administrative judge or receive a final decision without a hearing. 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.

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). Further, the report must include supporting documentation of the Agency's compliance, including evidence that the corrective action has been implemented.

#### IMPLEMENTATION OF THE COMMISSION'S DECISION (K0618)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via Fed SEP a final compliance report 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 and his / her representative.

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 tends 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)

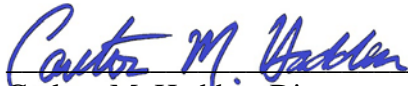
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this 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

December 20, 2018

Date