



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

████████████████████  
Britany N.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2019001079

Agency No. 4B-060-0080-18

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision by the Agency dated September 10, 2018, finding that it was in compliance with the terms of a July 12, 2018 settlement agreement. See 29 C.F.R. § 1614.402; 29 C.F.R. § 1614.504(b); and 29 C.F.R. § 1614.405.

**BACKGROUND**

During the period at issue, Complainant worked for the Agency in Connecticut.

Believing that the Agency subjected her to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process.

On July 12, 2018, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement provided that:

- (1) For any medical appointment that may occur during work hours or during a time when she could be called into work, [Complainant] will submit a 3971 to make management aware. She will attempt to advise management

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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.

verbally in addition as the date approaches. [Complainant] understands that time off will still need to be approved.

- (2) Should [Complainant] have any questions about delivery issues, she is encouraged to call her supervisor in the office for clarification.
- (3) Should [Complainant, the Supervisor, or the Postmaster] feel the need to discuss a performance issue they will discuss the issues in private off the floor. This will remain in place through September 14, 2018. Sometime between September 7 and 21, [2018] [Complainant, the Supervisor, and the Postmaster] will meet to discuss how they have been communicating and how to continue improving communications and raise any concerns they may have.

By letter to the Agency dated August 8, 2018, Complainant alleged breach, and requested that the Agency specifically implement its terms. Complainant noted that the Postmaster retaliated and harassed her, and that the Postmaster reprimanded and embarrassed her in front of her coworkers across the workroom floor.

In its September 10, 2018 determination letter, the Agency found no breach. The Agency stated that the Postmaster and Supervisor were aware of the conditions of the agreement, and reaffirmed that any performance discussions should be done in private, regardless of whether other employees are present.

The instant appeal followed.

### 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).

When a settlement agreement lacks adequate consideration, it is unenforceable. See Collins v. United States Postal Service, EEOC Request No. 05900082 (April 26, 1990). 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). 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).

Applying the legal principles, we find that the instant agreement is invalid due to lack of consideration. The instant agreement provides three Agency and Complainant obligations: that Complainant will submit the proper forms for medical appointments; that Complainant is encouraged to contact her supervisor with work-related concerns and questions; and, that any discussions regarding performance issues should be held in private, and off-floor. These three provisions provide no Agency or Complainant obligation other than what already typically occurs in the workplace. Provision 1, required that Complainant submit the proper paperwork when requesting time off for medical appointments, this is already a normal procedure required of all employees. Provision 2 encouraged Complainant to seek assistance from her supervisor should she have work related concerns. Again, this action is already typical and expected of all supervisor/employee relationships. Finally, Provision 3 stated that performance related matters would be discussed in a private, off-floor setting. This last provision, again, is already routine and expected for everyone in the workplace. These provisions offer no obligations different from what every Agency employee would typically expect in the workplace. Therefore, we find that instant agreement lacks adequate consideration.

### CONCLUSION

The Agency's decision finding no breach is REVERSED. The settlement agreement is voided and the case is REMANDED to the Agency so the underlying EEO matter may be reinstated for further processing in accordance with the ORDER below.

### ORDER

The Agency is ORDERED to resume processing of the underlying complaint from the point where processing ceased. The Agency shall acknowledge to Complainant that it has reinstated and resumed processing of the underlying complaint **within thirty (30) calendar days** of the date this decision was issued.

A copy of the agency letter of acknowledgement must be sent to the Compliance Officer as referenced below.

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).

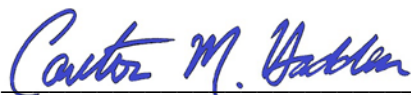
#### COMPLAINANT’S RIGHT TO FILE A CIVIL ACTION (R0610)

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

February 8, 2019  
Date