



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

[REDACTED]
Marvin D,¹
Complainant,

v.

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

Appeal No. 2019004445

Agency No. 1E-801-0077-18

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision by the Agency dated May 13, 2019, finding that it was in compliance with the terms of a November 9, 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

On November 19, 2018, Complainant and the Agency entered into a settlement agreement to resolve an EEO matter.² The settlement agreement provided, in pertinent part, that:

- (1) The detail rotation list will be adhered to as written in LMOU. Details will be assigned on a rotational basis and management agrees to post for a period of 14 days prior to beginning of a new quarter.
- (2) [Complainant] will be afforded an accumulation minimum of 9 weeks of detail prior to utilization of detail rotation list.

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 We note that the record does not contain information relating to the underlying complaint.

By letter to the Agency dated April 1, 2019, Complainant alleged breach of provisions (1) and (2) of the settlement agreement. Regarding provision (1), Complainant asserts that the Agency failed to post a detail sign up sheet 14 days prior to the beginning of the first two quarters in 2019. Regarding provision (2), Complainant asserts that Agency management assigned other employees for details, without first providing him with an opportunity for the details.

In its May 13, 2019 final decision, the Agency concluded that it had cured any breach of the settlement agreement. The Agency stated that management asserted regarding provision (1) that “there is no such agreement in the latest LMOU between APWU and the Denver Colorado Post Office.”³ The Agency further stated that a list was posted on April 17, 2019 and that “while this may be after the beginning of the quarter, it was posted.”

Regarding provision (2), the Agency stated that two employees were detailed prior to Complainant because they were needed for their qualifications on specified machines. The Agency stated that Complainant already received a one-week detail and that the Agency would be sending Complainant on another detail for eight weeks starting May 28, 2019.

The instant appeal followed. On appeal, Complainant reiterates that the Agency breached the settlement agreement. He asserts that management, at the time of the settlement agreement, agreed that there was an LMOU that addressed a requirement to post two weeks prior to the start of each quarter. Complainant asserts that management continues to send white male employees on details regardless of seniority.

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).

³ We note that the record does not contain any affidavits from Agency management or other documentation indicating any steps management took to implement the agreement or to corroborate the statements attributed to management in the Agency’s final decision.

In the instant matter, we determine that provisions (1) and (2) are too vague and general to have allowed for a meeting of the minds between the parties. Provision (1) makes reference to the detail rotation list in the LMOU. While the acronym “LMOU” may stand for Local Memorandum of Understanding, the settlement agreement does not *expressly* specify which LMOU would be adhered to with respect to the detail rotation list. The settlement agreement does not specify the union, date, or geographic region regarding the LMOU. The Agency asserts that there is no agreement in the latest LMOU between APWU and the Denver Colorado Post Office on the issue. However, Complainant asserts that at the time of the execution of the agreement, management told him that there was an LMOU in place that addressed this matter. Provision (2) also references the “detail rotation list,” as discussed with respect to provision (1). We are unable to ascertain which LMOU was supposed to be adhered to with respect to detail rotation list. Based on the foregoing, we find that there was no contemporaneous meeting of the minds between the parties and that the settlement agreement is void for vagueness. See *Mullen v. Dep’t of the Navy*, EEOC Request No. 05890349 (May 18, 1989).

To the extent that Complainant alleges that management keeps assigning white employees to details, he should contact an EEO Counselor if he wishes to pursue the EEO process for these subsequent matters.

Accordingly, we REMAND this matter to the Agency for reinstatement of Complainant’s underlying complaint from the point processing ceased in accordance with the ORDER below.

ORDER

Within thirty (30) calendar days of the date this decision is issued, the Agency is ORDERED to:

1. Resume the processing of the underlying complaint from the point where processing ceased due to the execution of the settlement agreement. The Agency shall acknowledge to Complainant that it has reinstated and resumed the processing of the previously settled matter.
2. Send a copy of the Agency’s letter of acknowledgment to the Compliance Officer as referenced below.

IMPLEMENTATION OF THE COMMISSION’S DECISION (K0719)

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.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 CFR § 1614.503(f) for enforcement by that agency.

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).

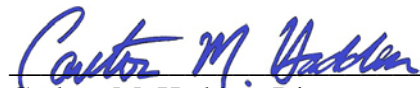
COMPLAINANT’S RIGHT TO FILE A CIVIL ACTION (R0610)

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

October 3, 2019
Date