



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

[REDACTED]
Hollis B,¹
Complainant,

v.

Scott Nathan,
Chief Executive Officer,
U.S. International Development Finance Corporation,
Agency.

Appeal No. 2024003677

Agency No. 2023-001-ODP

Hearing No. 570-2024-00031X

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision (FAD) by the Agency dated May 17, 2024, 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.

ISSUES PRESENTED

Whether the Agency was in breach of the settlement agreement entered into by the parties.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Data Analyst, GS-12 in Washington, DC. Believing that the Agency subjected

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.

him to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process. However, after a formal complaint was filed and a hearing requested, Complainant and the Agency entered into a settlement agreement on February 12, 2024 to resolve the matter. Subsequently, the assigned EEOC Administrative Judge dismissed this matter on February 23, 2024, pursuant to the settlement agreement reached by the parties. The settlement agreement provided, in pertinent part, that:

(4)(e)(i) [While on administrative leave, Complainant] will not perform official DFC work, including contacting DFC stakeholders, clients or contractors, without prior written instruction from his supervisor, however, he is free to engage in general union functions and internal union business.

By e-mail to the Agency dated April 22, 2024, 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 cut off his access to Agency IT systems including network drives, MS Teams and MS Outlook by the first week of March 2024. Complainant asserted that this restriction of access prevented him from performing his union duties and participating in union functions.

In its May 17, 2024 FAD, the Agency concluded that it has complied with the settlement agreement as written, and that it has no obligation to provide access to government equipment or information systems to accommodate Complainant. Furthermore, the Agency asserted that it discussed this matter with Complainant on several occasions to facilitate an accommodation. The Agency noted that it provided Complainant with a list of files on his computer and provided him an opportunity to identify the needed information. The Agency further noted that in its last communication with Complainant regarding this matter, Complainant wanted to consult with the union regarding the files and would reply but failed to do so.

The record contains an e-mail exchange between the Agency's Deputy EEO Director and Administrative Counsel in the Office of General Counsel. The Administrative Counsel provided the following response:

The Agency has acted in good faith as to the terms agreed upon. The term in the Settlement Agreement simply states that "...[Complainant] is free to engage in general union functions and internal union business..." While the Agency agreed that

[Complainant] could perform union duties during administrative leave, the Agency did not agree to provide government equipment (In fact, I was surprised to hear that the Union/[Complainant] may have been keeping its files exclusively on government equipment; Unions collect Union dues from its bargaining unit employees for such purposes as the purchase of its own equipment so as to keep its files from becoming government property; I would also add that [Complainant] uses a separate e-mail address for AFGE correspondences). Nothing in the Settlement Agreement with [Complainant] or the Collective Bargaining Agreement with AFGE (with the exception of a phone and office space), states that the Agency agrees to provide equipment to the Union or [Complainant]. Moreover, the settlement agreement states that the agreement constitutes the complete understanding between the parties and supersedes all other written or verbal (express or implied) agreements that the parties discussed or exchanged or considered and that address any pending or contemplated claims dismissed, waived, withdrawn, and released in accordance with the terms of this Agreement. . . . Nonetheless, DFC did discuss this issue with [Complainant]. I explained to [Complainant] that the Agency would consider what accommodation could be provided; but that the Agency was not obligated to do anything under the terms of the Settlement Agreement regarding access to the DFC network.

Complainant filed the instant appeal.

CONTENTIONS ON APPEAL

Neither Complainant nor the Agency submits a statement.

STANDARD OF REVIEW

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review "requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker," and that EEOC "review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue

its decision based on the Commission's own assessment of the record and its interpretation of the law").

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).

In the instant case, we find the Agency has not breached the settlement agreement. As the Agency correctly noted, while the settlement agreement provides that Complainant can perform union duties during administrative leave, the Agency did not agree to provide government equipment or information systems to accommodate Complainant in the carrying out of his union duties. Furthermore, the settlement agreement states that the agreement constitutes the complete understanding between the parties and supersedes all other written or verbal (express or implied) agreements that the parties discussed or exchanged or considered. Finally, Complainant has not shown that the Agency acted in bad faith.

CONCLUSION

Accordingly, we AFFIRM the Agency's finding of compliance in this matter.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0124.1)

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agency submits a written request that contains arguments or evidence that 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 for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration**. A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within 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).

Complainant should submit their request for reconsideration, and any statement or brief in support of their request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>

Alternatively, Complainant can submit their request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files their request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the 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(f).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0124)

You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. 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 their 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. If you file a request to reconsider and also file a civil action, **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

November 21, 2024

Date