



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

[REDACTED]
Anne H.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Western Area),
Agency.

Appeal No. 2020001174

Agency No. 4E640001019

DECISION

Complainant timely appealed with the Equal Employment Opportunity Commission (“EEOC” or “Commission”) from an October 8, 2019 Final Agency Decision (“FAD”) that found the Agency 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 Associate at Greismier Station in Springfield, Missouri.

Believing she had been subjected to unlawful discrimination (disability), Complainant, initiated the EEO complaint process on October 23, 2018. Complainant and the Agency entered into a settlement agreement (“the Agreement”) to resolve the matter on January 15, 2019.

The Agreement consisted of the following two provisions:

1. By February 15, 2019, [Complainant] will be provided clock rings for call in instances from May 19, 2017 to current.

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. [Complainant] will provide Management with specific information on her medical restrictions along with craft and mileage preferences. Management agrees to update [Complainant] on job search progress. If [Complainant] requests, updates in writing within 30 days.

On September 3, 2019, Complainant contacted the Agency in writing alleging it was in breach of the Agreement and requested that the Agency specifically implement its terms. Specifically, Complainant alleged that “Management made no effort to look for a job” and was unable to provide documentation that it complied with the Agreement. Complainant further stated that the Agency failed to provide her with a regular position “as promised.”

In response to the Agency’s inquiry, Management verbally confirmed that it complied with Provision 1, but “couldn’t recall” the exact date of compliance. As for Provision 2, Management stated that Complainant had a job offer within her restrictions, then cited Complainant’s current job. Alternately, Management claimed that Complainant was required to apply for positions, and she had not done so.

The Agency concluded that Management was in breach of the Agreement, because it could not provide evidence that it complied with either provision. However, rather than order specific performance, as requested by Complainant, the Agency voided the Agreement, finding Provision 2 to “vague and ambiguous” to be enforceable.

The Agency reinstated Complainant’s underlying complaint, which the Agreement had been intended to resolve. In raising the instant appeal, Complainant appears to argue that the breached agreement should be enforced as opposed to voided.

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 (Dec. 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 (Aug. 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. United States Postal Serv., EEOC Request No. 05910787 (Dec. 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); Complainant v. United States Postal Serv., EEOC Appeal No. 0120140143 (Feb. 20, 2014).

However, the plain meaning rule loses its relevance when a settlement agreement lacks adequate consideration because such agreements are unenforceable. See Collins v. United States Postal Serv., EEOC Request No. 05900082 (Apr. 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 Serv., EEOC Appeal No. 01964653 (July 1, 1997); Juhola v. Dep't of the Army, EEOC Appeal No. 01934032 (June 30, 1994) (citing Terracina v. Dep't of Health & Human Serv., EEOC Request No. 05910888 (Mar. 11, 1992)). Also, a settlement agreement that is too vague to enforce is invalid. See Bibb-Merritt v. United States Postal Serv., EEOC Appeal No. 0120072689 (Nov. 13, 2009).

Provision 1 does not appear to offer anything Complainant would not otherwise be entitled to as part of her employment. Provision 2 of the Agreement obligates the Agency to update Complainant on "job search progress." However there is no explanation as to what the "job search" entailed, including what jobs Management was expected to search for, and what efforts they were obligated to make with respect to the search. Therefore, Provision 2 is too vague for us to determine whether the Agency complied with its terms. See Bibb-Merritt (citing Angeles v. United States Postal Serv., EEOC Appeal No. 0120090317 (Mar. 6, 2009) (finding the agency's promise to "directly address issues brought up" too vague to enforce agreement), Huzina v. United States Postal Serv., EEOC Appeal No. 0120055039 (Jan. 4, 2006) (finding the agency's promise that supervisor would "open lines of communication" with complainant too vague to enforce) and Bruns v. United States Postal Serv., EEOC Appeal No. 01965395 (Jun. 24, 1997) (finding requirement that the complainant be "treated fairly with dignity and respect" was too vague to allow a determination as to whether the agency complied with such a provision)). As the Agency incurred no legal detriment with respect to Provisions 1 and 2 of the Agreement, the entire Agreement is void and unenforceable. The Agreement must be set aside, and Complainant's initial complaint reinstated.

Confidentiality of Mediation

Confidentiality is a "Core Principle" of Alternative Dispute Resolution ("ADR"). See EEOC Management Directive for 29 C.F.R. Part 1614., Ch. 3 § II.a.3 (Aug. 5, 2015) citing the Administrative Dispute Resolution Act of 1996 ("ADRA") codified as 5 U.S.C. §574; see also Nakesha D. v. Dep't of the Army, EEOC Appeal No. 0120161782 (Oct. 11, 2016).

On appeal Complainant cites the parties' statements during an August 9, 2019 mediation meeting, and refers to the mediation discussion that led to the January 15, 2019 Agreement. Because confidentiality is essential to the success of all ADR proceedings, the Commission does not consider any statements made during mediation in its decisions.

If Complainant wants a settlement agreement to be interpreted as mandating the agency take a specific action, that action must be included within the agreement, in writing, otherwise such an interpretation cannot be enforced. See Carter v. Dep't of the Army, EEOC Appeal No. 01985009 (Jul. 2, 1999) citing Jenkins-Nye v. Gen. Servs. Admin., EEOC Appeal No. 019851903 (Mar. 4,

1987). In other words, the Agency or Complainant is not obligated to take an action discussed during mediation unless the action is specifically written into the resulting settlement agreement.

Subsequent Acts of Discrimination

Allegations that new acts of discrimination violate an existing settlement agreement shall be processed as separate complaints. See 29 C.F.R. § 1614.504(c). On appeal, Complainant alleges that she has been discriminated against on the basis of disability and out of retaliation for her protected EEO activity. Specifically, she has yet to make career status, and she bid on and was awarded a route, only to find out from her coworkers that Management rescinded it, without providing an official explanation.

As these new allegations and basis of reprisal were not included in the settlement agreement before us, Complainant must contact an EEO Counselor pursuant to 29 C.F.R. § 1614.105 if she wishes to pursue them in an EEO complaint.

CONCLUSION

The Agency's decision to void the Agreement and reinstate the underlying EEO complaint is **AFFIRMED**.

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).

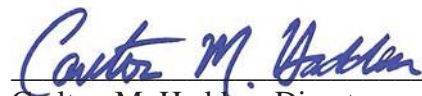
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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 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. 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

August 24, 2020
Date