



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

[REDACTED]  
Michel S,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2020002272

Agency Nos. 1E-853-0068-18; 1E-853-0035-19

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision (FAD) by the Agency, dated January 9, 2020, 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 Expeditor, at the Agency's "ASF" Albuquerque, New Mexico facility in Albuquerque, New Mexico.

On December 12, 2018, Complainant and the Agency entered into a settlement agreement to resolve a pre-complaint EEO matter, identified as 1E-853-0068-18. The settlement agreement provided, in pertinent part, that:

- (1) [The named] Manager Distribution Operations (MDO) or her designee will schedule and make assignments of employees based on the needs of the service;  
and

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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 MDO and Counselee will meet once a month for no more than 15 minutes per meeting for the next two months to discuss Counselee's concerns related to this EEO.

On June 28, 2019, the parties entered an agreement regarding a different pre-complaint, identified as Agency Number 1E-853-0035-19. That settlement stated that:

- (1) [The named] MDO and the Counselee will meet once a month for no more than fifteen (15) minutes per meeting for the next two months to discuss Counselee's concerns related to this EEO.

In an electronic communication with the Agency on December 5, 2019, Complainant alleged that the Agency was in breach of both settlement agreements.<sup>2</sup> Complainant requested that the Agency reinstate the two other above-referenced underlying pre-complaints. He alleged that the Agency failed to hold the meetings required by both Agreements and failed to honor his request for discovery in connection with his new complaint, identified as 1E-853-0005-20.

In its January 9, 2020 decision, the Agency concluded that it was in compliance with the Agreements. The Agency reasoned that, after Complainant filed his breach claim, the Agency cured the breach by holding the required meetings.

This appeal followed. On appeal, Complainant acknowledged that the named MDO met with Complainant twice, but he asserts that the Agency did not otherwise comply with the meeting requirements and did not provide the discovery that he was expecting.

In response, the Agency maintains that it has provided documentation to show that it complied with the requirements of the Agreement by holding the four meetings with Complainant. It also contends that the Agreement did not reference discovery and that Complainant did not explain any other reasons for filing the breach claims.

### 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).

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<sup>2</sup> He claimed that the Agency failed to schedule and make assignments based on the needs of the service. Regarding this latter point, however, Complainant filed a new complaint, 1E-853-0005-20, which is the subject of EEOC Appeal No. 2020003976.

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, the December 12, 2018 Agreement required that Complainant meet with the named MDO once a month for two months. Similarly, the June 28, 2019 Agreement required two meetings with the MDO “to discuss Counselee’s concerns related to this EEO.” The record shows that the named MDO was not available to hold all of the meetings because she was on extended leave, although Complainant acknowledged meeting with the designated MDO at least once.

The record shows that after Complainant notified the Agency of his breach claim, the Agency scheduled the meetings with Complainant and the manager who replaced the named MDO, who met with Complainant four times (on January 21, 2020, February 25, 2020, March 12, 2020 and April 10, 2020). The record on appeal includes the email documentation of the meetings. We find that the record before us contains sufficient documentation of the meetings that were provided, including the dates, and the name of the MDO carrying out the responsibilities of the originally named MDO. We find, therefore, that Complainant failed to prove that the Agency was currently non-compliant with the Agreements.

Finally, we note that to the extent that Complainant is asserting that the meetings did not provide Complainant with the opportunity to discuss the discovery for his new complaint, we note that the parties did not elaborate on the specifics of the management meeting envisioned by the parties at the time of execution of these Agreements, which pertained only to the resolution of the above-referenced pre-complaints.

### CONCLUSION

Accordingly, we AFFIRM the Agency’s Final Decision, finding no breach, for the reasons stated herein.

### STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0620)

The Commission may, in its discretion, reconsider this appellate decision if the 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 his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>.

Alternatively, complainant can submit his or her 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, 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 his or her 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(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

October 7, 2020

Date