



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

[REDACTED]  
Deshawn S.,<sup>1</sup>  
Complainant,

v.

Grant Turner,  
Chief Executive Officer and Director,  
U.S. Agency for Global Media,  
(formerly Broadcasting Board of Governors),  
Agency.

Appeal No. 2020001599

Agency No. OCR-17-07

EEOC Hearing No. 570-2018-00813X

**DECISION**

Complainant filed a timely appeal<sup>2</sup> with the Equal Employment Opportunity Commission (EEOC or Commission) after the Agency failed to issue a final decision (FAD) regarding Complainant's claim that the Agency failed to comply 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 Editor at the Voice of America's News Center at the Agency's facility in Washington, D.C.

On August 5, 2019, Complainant and the Agency entered into a settlement agreement to resolve an EEO matter. The settlement agreement provided, in pertinent part, that:

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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.

<sup>2</sup> Complainant filed his appeal 35 days after providing the Agency with notice of his breach claims.

- (1) In consideration of Complainant's agreement to the terms set forth here, the Agency agrees to take the following actions within fifty-five days after execution of this Agreement:
  - a. To convert 752 hours of "Home Leave," to "Sick Leave" for the use of Complainant. However, the Agency will not reverse the conversion of "Sick Leave" to "Home Leave" should Employee need "Home Leave" in the future.
  - b. To create a file to house and maintain past and future performance appraisals and ratings received by Complainant.
- (2) The Employee ... agrees to waive and fully release the Agency from his claims relating to the Employee's Case No. EEOC No. 570-2018-00813 ... and to withdraw his Grievances, in consideration for the [Agency's] agreement to the terms set forth in the Agreement.
- ...
- (4) Severability. In the event that any provision of this Agreement is rendered invalid by a court or administrative agency of competent jurisdiction or otherwise held or declared invalid under applicable law, such provision shall be deemed void, and the remainder of this Agreement shall continue in full force and effect.

The settlement agreement was fully executed by both parties by August 5, 2019. Thereafter, on August 7, 2019, an EEOC Administrative Judge issued an Order of Dismissal, dismissing the complaint as settled.

Although the Agreement required 752 hours of Home Leave to be converted to Sick Leave, Complainant's Earnings and Leave Statement for the pay period ending September 28, 2019, showed that the conversion of leave had not been done.

By letter to the Agency dated October 8, 2019, Complainant alleged that the Agency was in breach of the settlement agreement. He requested that the Agency implement its terms. Specifically, Complainant alleged that the Agency failed to convert the 752 hours of Home Leave to Sick Leave. In addition, Complainant's counsel sent the Agency a Notice of Noncompliance via certified mail dated November 6, 2019, which was the 30<sup>th</sup> day from the date Complainant became aware that the Agency failed to implement the conversion of leave, in accordance with the Agreement.

All of the other terms of the agreement were subsequently completed, except for the conversion of the 752 hours of Home Leave to Sick Leave.

On September 13, 2019, the Agency sent the request for conversion of 752 hours of Complainant's Home Leave to Sick Leave to the Defense Finance and Accounting Service ("DFAS"), which provides payroll accounting services to the Agency. DFAS did not respond to the Agency's request until November 22, 2019.

The Agency counsel informed Complainant's counsel that the Agency could not comply with the conversion of the leave hours because its payroll services (DFAS) refused to convert the leave hours. The Agency explained that the conversion of Home Leave to Sick Leave cannot be done because to do so would violate 5 C.F.R. § 630.401, and the Agency does not have the authority to require or order DFAS to violate 5 C.F.R. § 630.401. The Agency did not provide a Final Agency Decision.

Complainant filed this appeal with the Commission. On appeal, Complainant argues that the settlement agreement is valid and binding and that it is undisputed that the Agency failed to timely implement the conversion of leave, in accordance with Paragraph 1A of the Agreement. Complainant also maintains that the Agency's defense (that DFAS will not convert the leave) must fail, because the Agency is a party to the Agreement and DFAS works for the Agency. Complainant argues that the Agreement did not reference, DFAS, and the Agency should not be permitted to rely on any recalcitrance by a third party to justify the Agency's noncompliance.

In its January 21, 2020 brief on appeal, the Agency contends that Complainant's appeal is based on an unenforceable provision (Paragraph 1A) and the appeal should be dismissed.

### 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).

Here, it is undisputed that the Agency has complied with all the provisions of the settlement agreement between the parties with the exception of Provision 1A, which the Agency asserts it has been informed by DFAS is unenforceable as its compliance would violate the law.

In support of this contention, the Agency cites to a number of Office of Personnel Management (OPM) and U.S. General Accountability Office (GAO) opinions indicating that the substitution of one type of leave for another involves a vested statutory right and is not authorized in the absence of a law or regulation permitting such a substitution. According to the Agency, and without contradiction from Complainant, no such statute or regulation exists with regard to the conversion of home leave to sick leave. Therefore, by its own admission, we conclude the Agency is in breach of Paragraph 1A of the settlement agreement.

There are instances when an otherwise valid agreement may be void, voidable, or reformable, depending on circumstances. For example, under the general principles of contract law, a party may avoid an otherwise valid contract because of a mistake in the formation of the settlement agreement. Grant v. Department of the Army, EEOC Appeal No. 01931896 (June 18, 1993). Here, the Agency is asserting that it mistakenly believed that Paragraph 1A could be accomplished and only learned that it was unenforceable from DFAS after the agreement was executed. The Agency asserts that because of the Severability clause in the agreement, the agreement must be reformed simply to eliminate the Paragraph 1A.

However, we conclude that, in this instance, the Agency should bear the responsibility for the mistake in the agreement because it, through its legal representatives, avowed to undertake the action without determining first any possible conflicts with personnel regulations. We note this was an unqualified offer that created a reasonable expectation of performance. Because this mistake was material and the settlement agreement contained other valuable consideration, we find that the entire settlement agreement is voidable at Complainant's discretion, which would allow for the reinstatement of his underlying EEO complaint.

### CONCLUSION

We conclude that the Agency is in breach of Paragraph 1A of the settlement agreement. We REMAND this matter back to the Agency for further processing in accordance with the following Order.

### ORDER

- (1) Within 30 calendar days of the date of this decision, the Agency is directed to provide Complainant with written notice of his option to choose between: (1) acceptance of the settlement agreement, without Paragraph 1A concerning the conversion of home leave to sick leave, or (2) voiding the entire settlement agreement and requesting that his complaint be reinstated from the point processing ceased. If Complainant chooses the second option, the Agency shall promptly make a request for hearing on Complainant's behalf to the appropriate EEOC Hearings Unit for adjudication on the complaint as this is the point in processing where settlement occurred.

- (2) The 30-day period for issuing in the option letter referenced in Order (1) above may be extended with the permission of Complainant if the parties elect to engage in further negotiations in an attempt to reform the settlement agreement with revised terms.
- (3) If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), he is entitled to an award of reasonable attorney's fees incurred in the processing of the instant appeal. The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of the date this decision was issued. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.
- (4) A copy of the option letter to Complainant and other evidence of compliance must be sent 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 C.F.R. § 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)

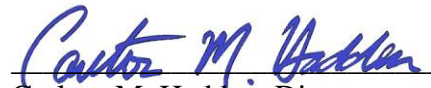
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this 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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

May 26, 2020  
Date