



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

[REDACTED]  
Miles N,<sup>1</sup>  
Complainant,

v.

Louis DeJoy,  
Postmaster General.  
United States Postal Service,  
Agency.

Appeal No. 2020005234

Agency No. 4K-300-0382-19

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision (FAD) by the Agency dated June 8, 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 a Carrier at the Agency's Athens Post Office facility in Athens, GA.

On October 17, 2019, Complainant and the Agency entered into a settlement agreement to resolve the above referenced EEO matter. The settlement agreement provided, in pertinent part, that:

- (1) It is mutually agreed between the parties that this matter (EEO Case No: 4K-300-0382-19) be resolved as follows: Management agrees to present training opportunities for [Complainant] within six months.

By the end of six months, Complainant had not been provided the promised training. By letter to the Agency dated April 17, 2020, Complainant alleged that the Agency was in breach of the settlement agreement. He stated that he was still working as a carrier and had not been given the

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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.

higher level supervisory training opportunities. He also stated that the noncompliance had taken place in the Athens Post Office in the Atlanta District. He seeks monetary payment and to be allowed to perform his duties without being discriminated against.

The Agency acknowledged that it had not provided any training opportunities within the six months. The former Postmaster said that it was understood that Complainant was to do his training in Athens, and there had been no follow-up by the Agency. After the six months, the Postmaster, who was one of the signatories to the Agreement, offered the training at her new location. Management stated it presented Complainant an opportunity via phone on May 4, 2020 and May 6, 2020, but he only wanted the training to which the parties agreed, which was to work at his assigned duty station as of the date of the execution of the Agreement.

In its final determination decision, the Agency acknowledged that “discussions revealed Complainant did not receive a training opportunity during the six months following the signing of the Agreement.” Although the Agency admitted the settlement agreement was not adhered to, it stated it later offered a structure two-week training in the former Postmaster’s new office to cure the breach, but Complainant did not accept the offer to training with the former Postmaster as it would entail a commute of one hundred miles one-way commute and the parties understood that the training would be where Complainant was located. The Agency also stated “the COVID-19 pandemic interfered with normal operation of the Postal Service and it did not want employees moving from one office to another during this term.” In its decision, the Agency addressed other issues that are beyond the scope of the settlement agreement and which pertain to issues, that the Agency acknowledged in the FAD, are the subject of Complainant’s other claims filed after this settlement Agreement was executed.

The instant appeal followed.

### 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, the parties agreed that management would present training opportunities for Complainant within six months. That was management's singular obligation. The record shows that this requirement was not met. One of the management signatories (the Postmaster at the Athens Post Office at the time the Agreement was signed) acknowledged that the training had not been presented. Instead, after the expiration of the six-month period, the Agency proposed an addendum to the Agreement, in which the Agency offered to provide subsequent structured training to cure the breach. The proposed training was at a location that required a 100-mile one-way commute and would encompassed his claims that were filed after the execution of the October 17, 2019 Agreement. Complainant did not agree to or accept the proposed addendum to the Agreement.

This Agreement had one requirement – that Complainant be presented with training opportunities within six months of the execution of the Agreement. We find that the record supports Complainant's claim that the Agency breached the Settlement Agreement. We are not persuaded that the Agency cured the breach when it offered a training opportunity after the six-month period ended and which required a total 200-mile daily commute.

Further, in this case, we find that Complainant did not knowingly waive and release the Agency from any claims or causes of action for future damages that were incurred after the execution of the Agreement and that any waivers that he did make were contingent on the Agency's compliance with the terms set forth in this Agreement. Because we find that there has not been compliance, therefore, Complainant is the prevailing party in this matter.

Where this Commission finds that the settlement agreement has been breached, the only two remedies usually available are specific performance of the terms of the agreement or reinstatement of the underlying EEO complaint at the point processing ceased. See 29 C.F.R. § 1614.504 (c). Inasmuch as Complainant did not clearly specify in his breach notices which remedy was preferred. We therefore give Complainant the option, in accordance with this decision and the ORDER below, of either reinstating his underlying EEO complaint, or specifically enforcing the terms of the Agreement, which include all of the benefits noted in the Agreement.

For clarity, we note that Complainant did not receive any monetary benefits under the terms of the Agreement. Therefore, there is nothing for him to return if he should choose to reinstate his complaint. If he chooses to obtain specific performance, the training would need to be provided within six months and at the Athens Post Office or other safe location acceptable and convenient to Complainant, given the current safety protocols that may be required.

To the extent that Complainant wishes to address new claims of discrimination regarding other actions that occurred after the execution of the Agreement, he should initiate EEO counseling with the Agency, if he has not already done so.

### CONCLUSION

We find that the Agency breached the October 17, 2019 Agreement. Accordingly, we REVERSE the Agency's Breach Decision and REMAND the matter for action in accordance with the ORDER below.

### ORDER

The Agency is ordered to take the following remedial action:

1. Within thirty (30) calendar days of the date of this decision, the Agency is ordered to notify Complainant of his option to either return to the status quo prior to the signing of the settlement agreement or to obtain specific performance of the agreement. The Agency shall also notify Complainant that he has fifteen (15) calendar days from the date of his receipt of the Agency's notice within which to notify the Agency either that he wishes to return to the status quo prior to the signing of the agreement or that he wishes to allow the terms of the agreement to stand.
2. If Complainant elects specific performance, the Agency shall notify Complainant that the terms of the settlement agreement shall stand and the Agency will abide by the terms of the Agreement (to present training opportunities (supervisory training opportunities) within six months.
3. If Complainant elects to reinstate his EEO complaint (referenced as Agency No. No. 4K-300-0382-19), the Agency shall resume processing the EEO complaint from the point processing ceased. The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108 et seq. The Agency shall acknowledge to the Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision becomes final. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision becomes final, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request.
4. The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSep). See 29 C.F.R. § 1614.403(g). Further, the report must include supporting documentation of the Agency's actions, including evidence that the corrective action has been implemented.

### 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 be 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 (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 (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

January 6, 2021

Date