



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

[REDACTED]
Agnus W.,
Complainant,

v.

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

Appeal No. 2020005488

Agency No. 1G-351-0009-19

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from an Agency final decision, dated July 16, 2020, finding that it was in compliance with the terms of January 8, 2019 settlement agreement. The Commission accepts the appeal. See 29 C.F.R. § 1614.402; 29 C.F.R. § 1614.504(b); and 29 C.F.R. § 1614.405.

BACKGROUND

During the relevant time, Complainant worked at the Agency's Processing & Distribution Center located in Montgomery, Alabama. Believing that the Agency subjected her to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process.

On January 8, 2019, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement provided, in pertinent part, that:

The beginning shift time for all USPS employees working on limited/light duty in manual letter section of the Montgomery P&DC will be changed to begin at 7:00 p.m.

By letter to the Agency dated June 1, 2020, Complainant alleged breach of the subject settlement agreement. Complainant requested the reinstatement of the underlying complaint if the terms cannot be implemented, noting that “constant violations prove [Manager] does not plan to adhere to the terms agreed upon.”

Specifically, Complainant alleged that when she returned to work in October 2019, following a six-month medical absence, she observed Employee-C working in the unit and not reporting at the start time required by the agreement. According to Complainant, she contacted the EEO Specialist on November 14, 2019 regarding the alleged breach and was advised to remind the Manager, Distribution Operations (hereinafter “Manager”) of his obligations under the settlement. The next day, Employee-C was no longer working in the unit. On December 14, 2019, Employee-M was permitted to work earlier than 7:00 p.m.

More recently, in May 2020, Complainant learned that Employee-L was working in the unit during Tour 2. Further, Manager permitted Employee-S to work in the unit without abiding by the agreed start time.

On July 16, 2020, the Agency issued a decision finding no breach of the settlement agreement. As an initial matter, the Agency found that Complainant’s allegation was untimely filed. The Agency, however, also acknowledged Complainant’s assertion that the incidents regarding Employee-C and Employee-M were late, but had been presented in an effort to show past violations. According to Complainant, the circumstances involving Employee-L and Employee-S were timely and ongoing. Therefore, assuming arguendo that the breach allegation was timely raised, the Agency proceeded to consider the substance of Complainant’s claim.

According to Management Official, the begin tour time for all light/limited duty employees in the Manual Letter Section (030), was changed to 7 p.m. when the subject agreement was signed. As for Employee-C, the Management Official noted the he had only worked in the unit for one month¹. As a Flat Sorter Machine Clerk, assisting the unit with manual flats distribution and morning dispatch, he was permitted to maintain his regular reporting time. Regarding Employee-M, Management Official admitted that he did start at another time on one occasion, in December 2019, but did not recall the reason why the modification was granted for that day. Management Official contends that Employee-M continues to work in the unit and has a 7:00 p.m. start in accordance with the settlement agreement. Employee-L, explained Management Official, was not assigned to the 030 Section, but performing a detail position in the Business Mail Acceptance Unit. When she was not needed in BMAU, she was sent to assist in 030 Section to maintain her full-time schedule. To meet the needs of the detail assignment, Employee-L had a 9:30 a.m. start time. Management Official asserted that when her detail ends, in July 2020, she will return to her 030 Section assignment and 7:00 p.m. start time. Finally, the Agency reasoned that Employee-S did not abide by the agreement because he is not a limited/light duty employee. Moreover, he has a modified position and has been granted a different start time as a reasonable accommodation.

¹ From October 15, 2019 through November 15, 2019.

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 first consider the Agency's assertion that Complainant's allegation was untimely raised. With respect to the incidents regarding Employee-C and Employee-M, from October through December 2019, we agree that Complainant's June 1, 2020 allegation of breach was untimely. However, the incidents with Employee-L and Employee-S were timely raised with the Agency.

With respect to Employee-L, the Agency contends that while she worked in 030 Section during April 2020, she was on a detail and assigned to BMAU. As for Employee-S, Manager admits that the employee was permitted a different start time, but contends the changed start time was only on one occasion. The plain language of the agreement does not provide for exceptions nor does it identify possibly conflicting Agency obligations (i.e. providing an employee with a reasonable accommodation). Manager himself attested that "All limited/light duty employees that have been assigned to 030 have been assigned 7:00 p.m. reporting time to my knowledge, unless their skills and medical limitations allow them to be utilized in other sections besides 030." Therefore, we find that the Agency has breached the agreement.

Where, as here, a breach is found, the remedial relief is either the reinstatement of the complaint for further processing or specific enforcement of the settlement agreement. We note that in her June 1, 2020 correspondence alleging breach, Complainant requested that the Agency reinstate her underlying complaint. Further, in light of the agreement requirements², the Commission finds reinstatement to be the appropriate remedy.

² The Agency is cautioned regarding the execution of future agreements, which have an impact upon *an entire unit of employees*, particularly with such broad language, given the difficulties which may well result during implementation.

CONCLUSION

The Agency's decision finding no breach of the subject agreement was improper and is **REVERSED**. The underlying matter is **REMANDED** to the Agency for further processing in accordance with this decision and the **ORDER** below.

ORDER (E0618)

The Agency is ordered to resume processing the remanded complaint underlying the settlement agreement 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 was issued. 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 was issued, 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.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, a copy of complainant's request for a FAD, or a statement from the agency that it did not receive a response from complainant by the end of the election period.

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 (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