



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

[REDACTED]  
Valentin P.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2021001317

Agency No. 4B-110-0154-18

**DECISION**

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision (FAD) by the Agency dated November 6, 2020, finding that Complainant's breach claim was untimely filed and, in the alternative, that it did not breach the terms of the settlement agreement into which the parties entered. 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 as a Training Technician, P-07, at the Agency's Brooklyn Processing and Distribution Center in Brooklyn, New York. Believing that the Agency subjected him to unlawful discrimination, Complainant contacted an EEO counselor to initiate the EEO complaint process. On December 12, 2018, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement provided, in pertinent part, that:

- (1) The parties will participate and attend a joint meeting to discuss any work related issues which will be facilitated by [the EEO Specialist.] All parties understand they must speak to each other with dignity and respect. The meeting will take place within 45 days of the signing of the agreement.

---

<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.

The meeting did not take place. Complainant sent numerous emails to the EEO Specialist, beginning in December 2018 and again in May 2019, seeking to schedule the meeting. The EEO Specialist responded on May 15, 2019, indicating he was trying to schedule the meeting, and then later, on June 4, 2019, inquiring as to the contact information for Complainant's representative. Following that date, however, Complainant did not hear from the EEO Specialist again, despite sending additional emails. By letter to the Agency dated October 1, 2020, Complainant alleged that the Agency was in breach of the settlement agreement and requested that the Agency specifically implement its terms.<sup>2</sup>

In its November 6, 2020 FAD, the Agency concluded that Complainant's breach claim was untimely filed and, even assuming arguendo that it was not untimely, the Agency was not in breach of the settlement. Specifically, the Agency found that Complainant should have raised the alleged breach with the Manager of EEO Compliance within 30 days of when the alleged breach occurred, but instead Complainant did not file the breach allegation until more than a year later. In addition, even assuming Complainant's breach claim was timely, the Agency concluded it had not violated the agreement. While the Agency acknowledged that the meeting did not occur, it reasoned that this was not due to any action by the Manager. Rather, the Agency explained that the Manager had been informed by the EEO Specialist that Complainant said the meeting was no longer necessary. Complainant filed the instant appeal.

On appeal, Complainant contends he tried to contact the EEO Specialist numerous times in 2019 and 2020, in order to schedule the meeting, but did not receive a response. Complainant also asserts that he contacted an EEO counselor regarding the meeting in June 2020, but the EEO counselor simply told him the matter had been settled.

### 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).

---

<sup>2</sup> In his letter alleging breach, Complainant also included a number of additional claims, such as being required to perform higher-level work without receiving the appropriate associated title or pay. Complainant is advised that, to the extent he wishes to pursue these new claims through the EEO process, he contact an EEO Counselor.

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).

The plain meaning rule, however, loses its relevance when a settlement agreement lacks adequate consideration because such agreements are unenforceable. See Collins v. U.S. Postal Serv., EEOC Request No. 05900082 (April 26, 1990). Consideration in a settlement agreement is generally not at issue, as long as some legal detriment is incurred as part of the bargain. See Juhola v. Dep't of the Army, EEOC Appeal No. 01934032 (June 30, 1994). 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. U.S. Postal Serv., EEOC Appeal No. 01964653 (July 1, 1997).

We find that the instant agreement is void for lack of consideration. Here, the Agency agreed to a meeting between Complainant and his manager, to be facilitated by an EEO Specialist. Further, the agreement provided only that the parties would “discuss any work related issues” and do so with “dignity and respect”. The agreement does not specify the topics to be discussed nor does it place any obligation on the Agency to take any action or provide Complainant with anything to which he is not already entitled. See Brown v. U.S. Postal Serv., Appeal No. 0120090822 (April 1, 2009) (agency agreement to address complainant “as all other employees in a professional manner” lacked consideration). The agreement provides no relief or benefit to Complainant for the settlement of his complaint. Therefore, we find that the settlement agreement is void and unenforceable due to a lack of consideration.<sup>3</sup> Accordingly, Complainant’s complaint shall be reinstated.

### CONCLUSION

For the foregoing reasons, the Agency’s decision is **VACATED** and the matter is **REMANDED** to the Agency for further processing in accordance with this decision and the Order below.

### ORDER

**Within thirty (30) calendar days** of the date this decision becomes final, the Agency is ordered to notify Complainant that the December 12, 2018 settlement agreement has been voided by this decision and that the Agency will resume the processing of his underlying complaint from the point it was settled.

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).

---

<sup>3</sup> In light of our determination that the settlement agreement is unenforceable, we need not address the timeliness of Complainant’s breach allegation nor the merits of the claim.

Further, the report must include supporting documentation of the Agency's compliance, 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 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 (M0920)

The Commission may, in its discretion, reconsider this appellate decision if 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, a 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

December 14, 2021

Date