



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

[REDACTED]  
Cassy W.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2020005182

Agency No. 4C-080-0157-19

**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 25, 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 complaint, Complainant worked at the Agency's Post Office in Pleasantville, New Jersey. Believing that the Agency subjected her to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process. On August 26, 2019, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement provided that:

- (1) Upon Complainant's return to work, the Postmaster will assign all her proposed interactions with Complainant to Supervisor 1 or if he is not available to Supervisor 2. The Postmaster will meet with Complainant 30 days after Complainant's return to work to discuss progress or the lack thereof.
- (2) Supervisor 1 will request a pay audit of Complainant's pay for the period from December 6, 2018 to the present. Management will provide a source for answers

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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.

to any questions Complainant may have about what is shown in the audit either by video conference or personal meeting at the choice of the auditor. Management will send the audit report promptly upon receipt to Complainant's home address.

By letter to the Agency dated May 7, 2020, Complainant alleged that the Agency was in breach of the settlement agreement. Complainant alleged that the Postmaster did not reevaluate or discuss Complainant's work with her after 30 days. Complainant also argues that the Agency did not fully conduct a payroll audit and identified a number of payroll data she did not receive from the Agency.

In its June 25, 2020 FAD, the Agency first concluded that Complainant failed to timely raise her claim of a breach of agreement. The Agency points out that Complainant had a meeting with Supervisor 1 in January 2020, to discuss her payroll audit, and had a meeting with the Postmaster on April 16, 2020, to discuss her progress. Complainant did not raise her allegation of a breach until May 7, 2020. The Agency determined that Complainant's notification was more than 30 days after her meeting with Supervisor 1, and therefore, untimely.

Assuming Complainant's notification was timely, the Agency explained that it investigated Complainant's allegations and acknowledged that the Postmaster did not hold a meeting with Complainant until 31 days after she returned to work but concluded that the delay constituted harmless error. The Agency also concluded it complied with the agreement when it conducted a payroll audit and Supervisor 1 held a meeting with Complainant to discuss the results of the audit. 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 (Dec. 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 (Dec. 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 reject the Agency's contention that Complainant failed to timely raise her allegation of a breach of agreement.

While Complainant's meeting with Supervisor 1 occurred more than 30 days prior to her notification to the Agency, Complainant's meeting with the Postmaster occurred inside of 30 days. Accordingly, Complainant timely raised her allegation of a breach of agreement.

Generally, the adequacy or fairness of the consideration in a settlement agreement is not at issue, as long as some legal detriment is incurred as part of the bargain. When, however, one of the contracting parties incurs no legal detriment, the settlement agreement will be set aside for lack of consideration. Juhola v. Dep't of the Army, EEOC Appeal No. 01934032 (June 30, 1994). A term in a settlement agreement to do what is already required by law is not consideration. Walters v. U.S. Postal Serv., EEOC Appeal No. 01A45165 (Nov. 24, 2004).

In this case, the Agency incurred no legal detriment when it entered into the settlement agreement. In Section (1), the Agency, through the Postmaster, did nothing more than agree to meet with Complainant and change the lines of communication through which Complainant received her work. In Section (2), the Agency agreed to a payroll audit, the result of which would enable Complainant to be paid exactly what she is owed. The agreement does not place any actual obligation on the Agency to take any action or provide Complainant with anything to which she is not already entitled. See Natacha M. v. Dep't of Health & Human Servs., EEOC Appeal No. 2019003184 (Oct. 1, 2019) ("the Agreement did not provide Complainant with any monetary benefits or any other identified benefits beyond what is expected of management in a workplace."). The agreement provides no relief or benefit to Complainant for the settlement of her complaint. Therefore, we find that the settlement agreement is void and unenforceable due to a lack of consideration. Accordingly, the Agency shall reinstate Complainant's complaint from the point where processing ceased.

### CONCLUSION

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

### ORDER

The Agency is ordered to reinstate the underlying EEO complaint that was settled by parties in the August 26, 2019 settlement agreement and shall continue processing the remanded claims in accordance with 29 C.F.R. § 1614.108, from the point where processing ceased as a result of the settlement. 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 (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).

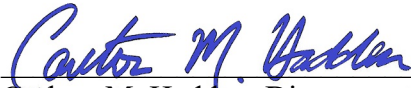
#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

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

January 24, 2022

Date