



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

[REDACTED]
Karol K.,¹
Complainant,

v.

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

Appeal No. 2020005204

Agency No. 4B-070-0182-16

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision (FAD) by the Agency dated August 13, 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 as a City Carrier Assistant (CCA) at the Agency's Union Post Office in Union, New Jersey.

Believing that the Agency subjected her to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process. On January 25, 2018, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement provided, in pertinent part, that:

- (1) Complainant is a City Carrier Assistant (CCA) and will be converted to a regular carrier position assigned to the Union Post Office in accordance with the national agreement and the Memorandum of Understanding between the Agency and the National Association of Letter Carriers.

¹ 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.

- (2) Once Complainant is converted to a regular carrier position, she will be eligible to apply for a transfer under the transfer rules of the national agreement and the Memorandum of Understanding between the Agency and the National Association of Letter Carriers.
- (3) Complainant can apply for a transfer to any office with an opening for transfer. If Complainant requests a transfer to any of the following offices (Livingston, Short Hills, Cranford, Millburn) then a Management Official will speak to the Postmaster on her behalf.

On July 9, 2020, Complainant contacted the EEO Office alleging that the Agency failed to honor the agreement.

In the August 13, 2020 FAD, the Agency indicated that an Agency Official contacted Complainant over the telephone on July 19, 2020. During that conversation, Complainant provided additional information regarding her breach claim. The Agency Official noted that Complainant stated that, in regard to term 2, she had put in for an unspecified number of transfer requests to offices in various districts; and in regard to term 3, the former Postmaster had retired and she had not applied to transfer at any of the four offices specified in the settlement agreement.

On appeal, Complainant provided no statement, but rather submitted a copy of the settlement agreement with the first sentence of term 2 underlined.

The Agency provides only a copy of the allegation of breach, the settlement agreement, and its FAD in response to the appeal.

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 Affs., EEOC Request No. 05900795 (Aug. 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).

As an initial matter, we find that term 2 is unenforceable and void because it does not provide Complainant with anything that she was not already entitled to receive as a matter of law. See Walters v. U.S. Postal Serv., EEOC Appeal No. 01A45165 (Nov. 24, 2004). However, because terms 1 and 3 of the settlement agreement provided the necessary consideration, we find that the agreement as a whole is not invalid.

We find that term 2 is void for lack of consideration. 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. However, when one of the contracting parties incurs no legal detriment, the provisions of the agreement will be set aside for lack of consideration. See MacNair v. U.S. Postal Serv., EEOC Appeal No. 01964653 (July 1, 1997); Juhola v. Dep't of the Army, EEOC Appeal No. 01934032 (June 30, 1994) (citing Terracina v. Dep't of Health and Human Serv., EEOC Request No. 05910888 (Mar. 11, 1992)). Here, term 2 does not require the Agency to incur any legal detriment at all. This term fails to confer on Complainant any benefit that she was not already entitled to as a matter of law or policy. Therefore, the Commission finds that term 2 is void for lack of consideration.

Turning to term 3, Complainant has not specified the exact nature of the alleged breach. The Agency noted in its FAD that Complainant indicated that she has not requested a transfer as provided in term 3. On appeal, Complainant does not dispute the FAD nor does she provide any additional information. As such, we cannot find that the Agency has breached the settlement agreement.

CONCLUSION

Accordingly, we AFFIRM the Agency's finding of no breach of the settlement agreement.

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 (S0610)

You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. 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. If you file a request to reconsider and also file a civil action, **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

March 8, 2022

Date