



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

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

v.

Louis DeJoy,  
Postmaster General,  
United States Postal Service  
(Field Areas and Regions),  
Agency.

Appeal No. 2022004507

Agency No. 1F-946-0041-16

**DECISION**

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from an Agency final decision, dated July 20, 2022, finding that it was in compliance with the terms of a January 31, 2022 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 as a Mailhandler at the Agency's Oakland Processing and Distribution Center in Oakland, California. Believing that he was subjected to discrimination based on his national origin (Mexico), Complainant filed a formal EEO complaint.

On January 31, 2022, Complainant and the Agency entered into a settlement agreement to resolve the matter. In addition to a monetary payment, the settlement agreement provided, in pertinent part, that:

- 2(a) Within three weeks of the date of the final signature of this agreement, [the Agency] agrees to send Complainant a letter at the address above, instructing him to return to work as an unassigned mail handler at 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.

Richmond P & DC. Complainant understands that in accept this position he forfeits all rights to seniority as required by the Collective Bargaining Agreement.

On February 18, 2022, Complainant was sent a letter instructing him to return to work on February 26, 2022, Tour 1 at 24.00 hours. In correspondence dated June 13, 2022, Complainant alleged breach. Specifically, Complainant alleged that the Agency had not paid him for two and a half months; owed him pay for 180 hours; did not provide him with a work identification until April 28, 2022; did not issue him a time card until May 16, 2022; and returned him to work at a starting salary instead of what his years at the Agency entitled him to.

In its July 20, 2022 decision, the Agency found no breach. The Agency determined that, after speaking with Complainant on July 6, 2022, the matter of not being paid was “no longer an issue” because management was in the process of making the necessary adjustments. As for his salary, the Agency noted that the agreement provided that Complainant “forfeit all rights to seniority”. The Agency therefore reasoned that “providing you with a higher-level salary for a lower seniority position after you expressly forfeited your seniority rights, would violate Article 12.2 of the contract.” Additionally, the Agency stated that “there was no agreement that you would retain your salary upon being returned to work”. Complainant filed the instant appeal.

On appeal, Complainant, through his attorney, argues that the agreement language “forfeits all rights to seniority” does not relate to salary level and require him to lose his previous pay level. Rather, citing the 2019 Mailhandlers Collective Bargaining Agreement (CBA), Complainant contends that seniority provisions relate to bidding and assignments, not salary. Likewise, asserts Complainant, the settlement language does not have an impact upon his “seniority rights” for retirement purposes. Additionally, Complainant states that the Agency erroneously references placing Complainant in a “new position”, when the agreement simply assigned him to a new *location* (i.e. Richmond). Complainant argues that he was placed in the “exact same position he held in 2016, a full time Mailhandler, when the issues in the underlying case occurred.” In support, Complainant notes that the Notification of Personnel Action form reflects that the action was labeled as “reinstatement.”

### 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).

As an initial matter, we note that Complainant does not challenge the Agency's statement, in its decision, that the matter of missing pay has been resolved. We find that this issue, as well as alleged delays in receiving a work i.d. card or timecard, is not covered by the January 31, 2022 settlement agreement. In his allegation of breach, where Complainant raised these issues, he explained: "I can't help but feel that all this that I am experiencing is in retaliation for filing an EEOC complaint and getting my job back." Because the settlement agreement does not encompass these issues, Complainant is advised to seek EEO counseling if he wishes to pursue them through the EEO process. We shall consider provision 2(a) that is properly before us.

While the Agency correctly stated that the settlement agreement does not explicitly provide for the rate of Complainant's salary, it relies on settlement language - "forfeits all rights to seniority as required by the Collective Bargaining Agreement" - to justify the lower salary given to Complainant upon his return to the Agency per the agreement. However, we are persuaded by Complainant's arguments on appeal that "seniority" as to the CBA, does not dictate salary level. Rather, we find that with the absence of specific language regarding salary, Complainant's reinstatement would be at the salary he enjoyed prior to his departure from his Mailhandler position in Oakland. Therefore, we find that the Agency was not barred from paying Complainant at his previous Mailhandler salary by the agreement language regarding forfeiture of CBA seniority, and by providing him with the lowest/entry level salary upon his reinstatement the agreement was breached.

Where breach is found, the Commission has two options to remedy the situation: 1) reinstate the complaint or 2) order specific performance. We note, however, that if a complaint is reinstated for further processing, the parties must be returned to the status quo at the time that the parties entered into the settlement agreement. This would require that Complainant return or forego any benefits received pursuant to the settlement agreement. See, e.g., Armour v. Dep't of Defense, EEOC Appeal No. 01965593 (June 24, 1997). In this case, Complainant would be required to return the sums paid to him by the Agency pursuant to the agreement if he selected reinstatement.

### CONCLUSION

Accordingly, we find that the Agency breached the settlement agreement and the matter is REMANDED to the Agency for further processing as set forth in the Order below.

### ORDER

Within thirty (30) calendar days of the date this decision is issued, the Agency shall notify Complainant of his option to either:

- (a) return to the status quo prior to the signing of the January 31, 2022 settlement agreement and having his underlying complaint reinstated, or
- (b) having the terms of the January 31, 2022 settlement agreement specifically enforced as set forth in the instant decision (i.e. Complainant's reinstatement to the Mailhandler position shall be at the salary at the time of his departure from the Agency).

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 of his choice. Complainant shall be informed that in order to return to the status quo ante, he must return any benefits received pursuant to the agreement. If Complainant elects to return to the status quo ante, and all benefits are returned, the Agency shall resume processing Complainant's underlying complaint from the point processing ceased pursuant to 29 C.F.R. § 1614.108 et seq. If, however, Complainant elects not to return to the status quo ante, the Agency shall notify Complainant that the terms of the settlement agreement will be specifically enforced with regard to the next suitable position that becomes available.

A copy of the Agency's notice to Complainant regarding his options, as well as a copy of either the correspondence reinstating the complaint for processing or the correspondence notifying complainant that the terms of the agreement will be specifically enforced and evidence of such performance, must be sent to the Compliance officer, as referenced below.

#### ATTORNEY'S FEES (H1019)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she/he is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of receipt of this decision. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

#### 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

December 15, 2022

Date