



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

[REDACTED]
Latina E,¹
Complainant,

v.

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

Appeal No. 2023000077

Agency No. 1C-531-0136-22

DECISION

Complainant filed an appeal with this Commission claiming that the Agency was not 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 Postal Worker at the Agency's postal facility in Atlanta, Georgia. Believing that the Agency subjected her to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process. On April 25, 2022, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement provided, in pertinent part, that:

"Management agrees to credit [Complainant] 80 hours of annual leave by May 15, 2022."

By letter to the Agency dated May 26, 2022, Complainant alleged that the Agency was in breach of the settlement agreement. Specifically, Complainant alleged that the Agency has failed to credit her 80 hours of annual leave as promised. She requested that the Agency implement its terms or, alternatively, that her complaint be reinstated.

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.

In its December 8, 2022 response, the Agency's EEO Compliance Specialist explained that efforts to implement the necessary pay adjustments - plus other contemporaneous pay adjustments - resulted in an unforeseen, negative, consequence. More specifically, the entries made in the Agency's computerized payroll system generated an accounts receivable invoice, indebting Complainant to pay \$2,164.49, in order to covert previously-taken paid leave into Leave Without Pay (LWOP), so that the leave could be restored to her leave bank. This was never the intent of the settlement agreement. The Compliance Specialist noted that she has had numerous contacts with the Agency's Labor Relations Specialist, who is working to remedy the situation, and has managed to get the debt waived, which occurred on December 1, 2022. He has also vowed to enter the correct pay adjustments to get Complainant the agreed-upon 80 hours of annual leave, by replacing previously-used annual leave with paid administrative leave, which will not create any type of unintended debt.

ANALYSIS

Although the Agency failed to issue a determination decision on Complainant's breach allegation, we will treat the Agency's December 8th submission to the Commission as its final agency decision in the interest of judicial efficiency.

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. See 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 find that the Agency has breached the settlement agreement. The settlement agreement is plain and unambiguous on its face in that the Agency was obligated to credit Complainant with 80 hours of annual leave by May 15, 2022. While the Agency has most recently promised (above) to enter the correct pay adjustments to get Complainant the agreed-upon 80 hours of annual leave, the current record on appeal reflects that it has not yet done so.

When the Commission finds that a breach has occurred, the only remedies available are specific performance of the terms of the agreement or reinstatement of the underlying EEO complaint at the point processing ceased. See 29 C.F.R. § 1614.504 (c).

As Complainant has not expressly indicated which of these options she would prefer, we order that Complainant be provided the option of reinstatement of her complaint or specific performance of the settlement agreement, i.e., crediting her 80 hours of annual leave.

Accordingly, we REMAND this matter to the Agency for further processing in accordance with the Order below.

ORDER

Within thirty (30) calendar days from the date this decision is issued, the Agency is ordered to take the following actions:

1. Notify Complainant of her option to either return to the status quo prior to the signing of the settlement agreement or to obtain specific performance of the agreement. The Agency shall also notify Complainant that she has fifteen (15) calendar days from the date of her receipt of the Agency's notice within which to notify the Agency either that she wishes to return to the status quo prior to the signing of the agreement or that she wishes to allow the terms of the agreement to stand.
2. If Complainant elects specific performance, the Agency shall notify Complainant that the terms of the settlement agreement shall stand, and the Agency will abide by the terms of the settlement agreement and will ensure that Complainant is credited 80 hours of annual leave.
3. If Complainant elects to reinstate her EEO complaint, the Agency shall resume processing the EEO complaint from the point processing ceased pursuant to the procedures in 29 C.F.R. Part 1614.
4. The Agency is further directed to submit documentation to the Commission that it has completed the ordered actions as set forth below in the section entitled "Implementation of the Commission's Decision."

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

October 25, 2023
Date