



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

[REDACTED]
Moshe C.,¹
Complainant,

v.

Megan J. Brennan,
Postmaster General,
United States Postal Service
(Eastern Area),
Agency.

Appeal No. 0120180362

Agency No. 4C-440-0077-17

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision by the Agency dated September 27, 2017, finding that it was in compliance with the terms of a May 16, 2017 settlement agreement. See 29 C.F.R. § 1614.402; 29 C.F.R. § 1614.504(b); and 29 C.F.R. § 1614.405.

BACKGROUND

On May 16, 2017, Complainant and the Agency entered into a settlement agreement to resolve a matter which had been pursued in the EEO process. The May 16, 2017 settlement agreement provided, in pertinent part, that:

Management shall produce 2016 and 2017 “payroll everything report” for [Complainant]. [Complainant] shall be provided 2 hours by June 1, 2017, to review the report. [Complainant] shall let management know of any discrepancies his finds. In the event that [Complainant] finds any discrepancies, within 2 weeks of him notifying management of the discrepancies, management shall complete form 2240, payroll adjustments, to correct the discrepancies.

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.

By PS Form 2564-A “Information for Pre-Complaint Counseling” to the Agency dated June 16, 2017, Complainant alleged that the Agency breached the settlement agreement because management did not comply with the agreement.

In its September 27, 2017 final decision, the Agency found no breach. The Agency noted that Complainant’s former supervisor acknowledged submitting the “payroll everything report” to Complainant on June 20, 2017, and that Complainant signed a receipt stating that he had received the information. The EEO Compliance Specialist (“Specialist”) stated that on July 19, 2017, the former supervisor spoke with Complainant and he acknowledged having the “payroll everything report.” The Specialist and Complainant outlined the steps that needed to be accomplished to resolve the breach of settlement.

The Specialist noted that Complainant stated that he required 2 hours to review the report and then would need 10-15 minutes to review Form 2240’s once management completed them before sending them to Accounting Services. The Specialist further noted that Complainant requested that he be told in advance when the 2-hour review was forthcoming, so he would be prepared with the relevant paperwork.

The Specialist stated that the former supervisor made six attempts to meet with Complainant to review the paperwork. The review, however, did not occur because of events such as Complainant calling in sick, taking annual leave or forgetting to bring in the paperwork. The Specialist stated that the former supervisor claimed that on September 2, 2017, she was able to sit down with Complainant and review the reports. The former supervisor stated, however, Complainant had not made management aware of any discrepancies. The Specialist noted that the former supervisor left the Westlake Station effective September 22, 2017.

The Specialist asserted that Agency management attempted to work with Complainant to resolve his breach allegation. However, Complainant’s continued unavailability made it difficult to complete the process. The record indicates that according to the Senior Systems Accountant, she nevertheless corrected the discrepancies identified by Complainant.

The instant appeal followed. Complainant, on appeal, states “I feel that the USPS has failed once again to follow any agreement because they have total control over my scheduled work days and hours. The USPS has now had over 10 full months to start and complete the paperwork for my pay adjustments and [former supervisor] has put the entire blame on me because of the 6 days she claims I wasn’t available out of the 240 days that they knew this needed to be accomplished. Their delaying in processing the paperwork has now limited the deadline date of me getting all back pay to less than 60 calendar days, to be in total DOL OWCP [Office of Workers Compensation Program] compliance of 12 months from date of DOL Final decision, which is Dec 28, 2017. It takes an average of 8-12 weeks to process USPS pay adjustments and then process OWCP claims for pay.”

In response, the Agency restates that despite management’s attempts to review documentation with Complainant, he was not available.

The Agency notes that after the issuance of the instant final decision, the new postmaster met with Complainant, and they agreed to the number of hours in question and that the adjustment would be submitted.

ANALYSIS AND FINDINGS

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).

In the instant case, we note that the instant settlement agreement imposed upon the Agency the following affirmative obligation: to assure that management would produce 2016 and 2017 "payroll everything report" for Complainant; provide Complainant, by June 1, 2017, 2 hours to review the report and inform management if he found any discrepancies; and if Complainant found discrepancies, and within 2 weeks of him notifying management of the discrepancies, management would complete Form 2240 to correct the discrepancies.

The Agency complied with the instant settlement agreement. The record contains a copy of the affidavit of a Senior Systems Accountant ("Accountant"), dated November 13, 2018. Therein, the Accountant stated that Complainant's pay adjustments had been completed. Specifically, the Accountant stated that Complainant's pay adjustments "have been completed and are reflected in the attached payroll journals. The payroll journal reflects that following changes were made:"

Pay Period (PP) 6 Week (Wk) 2 2016: 8 hours (hrs) Sick Leave (SL) (code 56) was changed to 8 hours of Continuation of Pay (COP) (071)

PP 7 Wk 1 2016: 40 hrs Absent Without Leave (AWOL) (code 24) was changed to 40 hrs COP (code 071)

PP 9 Wk 1 2016: 40 hrs SL (code 56) changed to 40 hours COP (code 071)

PP 9 Wk 2 2016: 22.69 hrs SL (code 56), 17.31 hrs Annual Leave (AL) (code 55) changed to 40 hrs COP (code 071)

PP 10 Wk 1 2016: 36 hrs AL (code 55) and 4 hrs of SL changed to 24 hrs SL (code 56) and 16 hrs COP (code 071). This reflects a change from PS Form 2240 because the accounting technician noted the Counselee was owed an additional 8 hrs of COP.

PP 10 Wk 2 2016: 40 hrs of OWCP (code 49) was changed to 40 hrs SL (code 056). The counselee had requested 8 hrs of COP however he had already been paid for 45 days of COP and could not be granted additional days so SL was substituted.

PP 12 Wk 1 2016: 40 hrs OWCP Leave Without Pay (LWOP) (code 049) changed to 32 hrs SL and 8 hrs holiday (code 058). Counselee had requested 8 hrs holiday and 32 hrs OWCP LWOP but that was not a valid request as we are unable to pay holiday leave unless the employee is in a pay status, thus he was given SL

PP 12 Wk 2 2016: 40 hrs of AL (code 055) changed to 30 hrs SL (code 58) and 10 hrs AL (code 55)

PP 17 Wk 2 2016: 16 hrs of AWOL (code 024) and 16 hrs AL (code 055) changed to 32 hrs Administrative Leave (Other Paid Leave Code 86)

PP 18 Wk 1 2016: 24 hrs AWOL (code 024) changed to 24 hrs Administrative Leave (Other paid Leave Code 86)

Please take note: the following adjustments are reflected on the PP 19 2018 payroll journal:

PP 2 Wk 1 2017: 8 hrs AL (code 055) changed to 8 hrs SL (code 056)

PP 2 Wk 2 2017: 2.01 hrs AL (code 055) changed to 2.01 hrs SL (code 056)

PP 3 Wk 2 2017: 2.25 hrs of AL (code 055) changed to 2.25 hrs SL (code 056)

PP 5 Wk 1 2017: 2.05 hrs AL (code 055) changed to 2.05 hrs SL (code 056)

PP 11 Wk 1 2017: 6.61 hrs OWCP LWOP (code 049) changed to 2 hrs OWCP LWOP (code 049) and 4.61 hrs SL (Code 56)

To read the payroll journal, note that the most current hours will be reflected first on the journal, and then original hours will follow.

The Calendar Year and PP are reflected as, for example, 16/10 (2016 PP 10) and will be found on the left side of the page. The PP and Year noted at the top of the page are the PP and Year the changes were made.

The Numbers 25 35 reflect changes made to Week 2, the numbers 1535 reflect changes made to Week 1. Week 2 will always be reflected first.

The codes with a star next to them reflect the original hours the employee was given. The codes without stars next to them reflect what the hours were changed to.

We note that a reasonable review of the record indicates that the Specialist corrected the discrepancies identified by Complainant. Complainant has not provided with specificity, any evidence reflecting that the Agency findings of discrepancy resolution were erroneous.

Finally, we note that brief failure to satisfy a time frame specified in a settlement agreement does not prevent a finding of substantial compliance of its terms, especially when all required actions were subsequently completed. Mopsick v. Department of Health and Human Services, EEOC Appeal No. 0120073654 (August 17, 2009) (citing Lazarte v. Department of Interior, EEOC Appeal No. 01954274 (April 25, 1996)).

CONCLUSION

The Agency's final decision finding no breach of the May 16, 2017 settlement agreement is **AFFIRMED**.

STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which 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 to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in 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). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507.

In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your 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

July 2, 2019
Date