

**EQUAL OPPORTUNITIES COMMISSION  
CITY OF MADISON  
210 MARTIN LUTHER KING, JR. BOULEVARD  
MADISON, WISCONSIN**

Justin Rogers  
710 Kari Street #2  
Belleville WI 53508

Complainant

vs.

CPC Logistics  
5250 E Terrace Dr Ste N  
Madison WI 53178

Respondent

HEARING EXAMINER'S DECISION AND  
ORDER ON RESPONDENT'S  
MOTION TO DISMISS

CASE NO. 20152122

**BACKGROUND**

On June 17, 2015, the Complainant, Justin Rogers, filed a complaint of discrimination with the City of Madison Department of Civil Rights Equal Opportunities Division (EOD). The complaint alleged that the Respondent, CPC Logistics, discriminated against the Complainant in employment on the bases of sex and race and retaliated against the Complainant for his exercise of a right protected by the Ordinance. Mad. Gen. Ord. Sec 39.03(8) and (9). The Respondent denied having either discriminated or retaliated against the Complainant in any manner.

Early efforts at mediation were unsuccessful and the EOD Investigator/Conciliator began her investigation. In late October 2015 or early November 2015, the parties began settlement discussions between themselves and without the assistance of the EOD. On or about November 3, 2015, the Complainant requested the assistance of the EOD Mediator in the current settlement discussions with the Respondent. On or about November 5, 2015, the Respondent, now represented by counsel, indicated that it did not wish the assistance of the EOD in settlement talks.

On or about November 5, 2015, the parties apparently struck an agreement. Part of this agreement included a monetary settlement paid to the Complainant. The Complainant was adamant that he receive the agreed-upon settlement funds on November 6, 2015, or the settlement would be void and he'd seek to have the complaint processed.

The parties exchanged text messages and emails on November 5, 2015 and November 6, 2015, including copies of a settlement agreement (attached) and a MEOD Withdrawal Form that the Complainant was supposed to sign and return to the Respondent for filing. The Respondent encouraged the Complainant to have the settlement agreement reviewed by an attorney to make sure all terms were as the parties agreed. Apparently, the Complainant did not seek review of the settlement agreement prior to agreeing to its terms. The

Respondent transferred the agreed-upon funds to the Complainant on the date required, November 6, 2015. However, the Complainant failed and refused to sign the settlement documents and the MEOD Withdrawal Form.

After several weeks of the Respondent's attempts to have the Complainant sign and return the settlement documents, the Respondent sought to have the complaint dismissed for execution of the settlement agreement. On December 7, 2015, the Respondent filed a Motion to Dismiss asserting that it had fully complied with the terms of the settlement agreement. On December 22, the Hearing Examiner issued an Order to Show Cause requiring the Complainant to demonstrate why the complaint should not be dismissed based upon his receipt of the settlement funds. The Order to Show Cause required the Complainant's response on or before January 8, 2016.

On January 4, 2016, the Complainant submitted a response to the Hearing Examiner indicating that though he'd received the settlement funds, the Respondent had not complied with other terms of the settlement agreement. The Complainant did not provide Respondent's counsel with a copy of this response. On or about, January 7, 2016, the Hearing Examiner transmitted a copy of the Complainant's response to the Respondent by facsimile transmission.

Under the terms of the Order to Show Cause, the Respondent was to respond to any submission by the Complainant on or before January 18, 2016. The Hearing Examiner did not receive any response from the Respondent under the terms of the Order to Show Cause.

On February 16, 2016, the Hearing Examiner determined that the Complainant's explanation for why the complaint should not be dismissed was credible and having not received a rebuttal from the Respondent, ordered that the complaint be remanded to the Investigator/Conciliator for completion of her investigation and issuance of an Initial Determination.

On February 22, 2016, the Respondent filed a motion requesting that the Hearing Examiner reconsider his order remanding the complaint asserting that it had mailed a response to the Complainant's explanation for why the complaint should not be dismissed which was not received by the Hearing Examiner or the EOD. The Respondent submitted proof of mailing and provided the argument that had not been received by the Hearing Examiner.

On February 24, 2016, the Hearing Examiner stayed further proceedings in this matter and directed the Complainant to respond to the Respondent's request and argument. On February 25, 2016, the Complainant faxed materials in response to the Hearing Examiner's directive not indicating whether he'd served a copy on the Respondent. On March 21, 2016, the Hearing Examiner sent by facsimile transmission a copy of the materials sent by the Complainant. On March 18, 2016, the Respondent filed a further Motion to Dismiss.

## DECISION

This matter presents an unusual set of demands and facts for the Hearing Examiner. On the one hand, the Complainant after having received a substantial monetary payment from the Respondent claims that he is due more and wishes to continue the processing of his claim while retaining the monetary payment he has already received. On the other hand, the Respondent contends that though it does not possess a settlement agreement signed by the Complainant that it is entitled to have the complaint dismissed for substantial compliance with the terms of

what it argues should be a binding agreement to dismiss the complaint. Disputes surrounding settlements in actions before the EOD tend to be rare, at least in part because the parties customarily work through the services of the EOD to make sure that there is a settlement and that the terms of the agreement have been met before funds are released to either party. In the present matter, the Respondent, either due to the press of time or due to its own mistaken belief that it could handle the situation, declined the proffered assistance of the EOD.

As a result of the control over the timing of settlement negotiations exercised by the EOD, there is almost no case law from which to examine the current dispute. The case of Young v. Nakoma Golf Club, MEOC Case No. 20032159 (Ex. Dec. 4/19/2005) is perhaps the only case that might bear upon the present matter. In Young, the parties, immediately prior to a public hearing, reached a settlement of the Complainant's claims. Proceedings were stayed so that the Respondent could reduce the agreement to writing for signature by the Complainant. The Respondent sent the prepared settlement agreement to the Commission along with a check made payable to the Complainant which was to be released upon receipt of the signed settlement document by the Commission.

The Complainant in the Young case, prior to signing the documents prepared by the Respondent, repudiated the settlement and requested further proceedings to be scheduled. The Complainant eventually filed a claim in United States District Court and asked that the proceedings before the Commission be stayed pending resolution of the claim in District Court.

Prior to the Complainant's filing his action in federal court, the Respondent sought to enforce the settlement agreement before the Commission. The Hearing Examiner found that under the circumstances, the Commission was without authority to enforce an agreement that had not been signed by both parties and which one party was repudiating.

There are many similarities between the present matter and the Young case and some striking dissimilarities as well. In both cases, the parties negotiated for some time and arguably struck a deal. In the Young case, the Complainant later contested that an agreement had been reached, but the Hearing Examiner was convinced that a settlement had been reached. When the Respondent then sought to enforce the agreement, the Hearing Examiner declined to do so when the Complainant repudiated the agreement prior to signing and prior to receiving any benefit under the terms of the proposed agreement.

In the present matter, the Respondent seeks to enforce the agreement as well. While the Hearing Examiner could be bound by his earlier decision in Young, there are differences that lead the Hearing Examiner to a contrary result.

First, in the Young case, there was no written indication of the acceptance of the terms of the settlement agreement. While the Complainant's signature does not appear on the settlement documents or on the MEOD Withdrawal form, there is a clear text message/email from the Complainant to the Respondent on November 6, 2015 indicating the Complainant's acceptance and willingness to be bound by terms of the settlement. Prior to the Complainant's indication of his acceptance of the terms of the settlement, he was encouraged by the Respondent to seek legal advice about the terms of the settlement. In Young, the Complainant, though not specifically encouraged to seek legal counsel, did so and it was after that review that he repudiated the previously reached agreement.

Another critical difference between the Young case and the present matter is that in Young, the Complainant received no benefits of the settlement prior to his rejection of it. The Complainant merely wished that the case proceed and the status quo be maintained. In the present matter, the Complainant has received a substantial monetary benefit paid to him as a condition of the settlement on November 6, 2015. It does not appear that the Complainant is offering to return that monetary settlement in order to return to the status quo so that his complaint may proceed.

A third key difference between the Young decision and the present matter is that in the present matter, the Complainant does not wish to repudiate the agreement, but to enforce what he understands the agreement to be. In Young, the Complainant wanted no part of the agreement. In other words, the Complainant in the present matter is content to recognize the agreement, but wants to enjoy all of the benefits that he believes are covered by the agreement. In this instance, it's not so much a matter of seeking not to have the agreement recognized, but a question of interpretation of what the settlement agreement covers.

Since this case really reflects more a question of interpretation of the agreement rather than a question of the validity of the agreement, the Hearing Examiner does not find that the holding in Young, supra, requires the parties to seek enforcement of their agreement in a different forum. In a recent case, Wrolstad v. CUNA Mutual Group, MEOC Case No. 20102042 (Ex. Dec. on Mot. to Dismiss 4/23/2015), the Respondent sought to dismiss a subsequently filed complaint after the Circuit Court declined to enforce a settlement agreement of a prior complaint until the Department of Civil Rights had the opportunity to address the issue of preemption.

The primary question for the Hearing Examiner is whether the Respondent has failed to comply with all the terms of the settlement agreement and has therefore abdicated its right to have the complaint dismissed. In order for this circumstance to be true, the Hearing Examiner must find that the settlement agreement covers additional terms beyond the payment of a monetary sum to settle the complaint. Specifically, the Complainant contends that the settlement requires the Respondent not to contest the Complainant's claim for unemployment compensation and that the Respondent has challenged the Complainant's right to unemployment compensation benefits.

The settlement agreement, copies of which were provided by both parties, indicate that the body of the settlement represents the complete agreement of the parties and that there are no additional terms not set forth in the agreement. This represents fairly standard language for a settlement agreement and is intended to limit future disputes about the extent of a settlement to the words of the agreement itself. The effect of this language is to extinguish any prior discussions of agreement not specifically addressed in the settlement document.

Review of the settlement agreement, which the Hearing Examiner has attached hereto, does not reveal any term or condition of settlement beyond the Respondent's timely payment of a monetary settlement. There is no provision addressing steps that the Respondent might have been required to take with respect to any unemployment claim or any other claim of the Complainant. Had the parties discussed or even made such an agreement, the "exclusivity" language contained in the settlement agreement would supersede and extinguish those additional agreements.

Since it appears that the Respondent has performed all steps required of it under the settlement agreement as agreed to by the Complainant on November 6, 2015 and the

Complainant has accepted and retained the benefits of the settlement agreement, the Hearing Examiner finds that the complaint must be dismissed as contemplated by the settlement reached between the parties. If the Complainant has separate claims arising outside of the scope of the settlement agreement or subsequent to November 6, 2016, he may file a separate complaint to address those issues so long as all the jurisdictional requirements of the Ordinance are met.

The Hearing Examiner finds that much of the current dispute and many hours of anxiety and expense could have been avoided had the Complainant sought to have the settlement agreement reviewed either by outside legal counsel or even by the Conciliator for the EOD, and if the Respondent had simply utilized the services already provided by the EOD and intended to protect the interests of both sides, this current controversy could have been avoided.

#### ORDER

The complaint is dismissed. Since the settlement agreement of the parties essentially deprives the EOD of jurisdiction, the attached Right to Appeal sets forth the Complainant's further rights.

Signed and dated this 30th day of March, 2016.

EQUAL OPPORTUNITIES COMMISSION

Clifford E. Blackwell, III  
Hearing Examiner

cc: Michael F Harris