

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-cv-02416-RPM-BNB

CYNTHIA M. MARTINEZ,

Plaintiff,

v.

JOHN E. POTTER, Postmaster General, United States Postal Service,

Defendant.

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**SETTLEMENT AGREEMENT**

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It is hereby stipulated and agreed by and between the undersigned parties and their attorneys that this action be settled, compromised, and dismissed in accordance with the following terms:

1. Defendant John E. Potter, in his official capacity as Postmaster General (hereinafter "Defendant"), hereby agrees to the following terms and conditions:
  - (a) Defendant agrees to reinstate Plaintiff to her former position, Supervisor Customer Services, EAS-17, Montclair Station, Denver, Colorado. Plaintiff's assigned work schedule shall be 6:30 a.m. to 3:30 p.m., with Saturday and Sunday off, which schedule shall not be unreasonably changed unless the legitimate business needs of the Postal Service require otherwise. Plaintiff shall be reinstated effective June 20, 2009, with a start date of June 22, 2009, or as soon thereafter as reasonably possible. Defendant shall provide 30 days training on the job at Montclair

Station to allow plaintiff to become familiar with the position and any changes that may have occurred since her removal.

(b) Defendant agrees to provide all applicable back pay and benefits as if Plaintiff had continually remained employed with the Postal Service, including interest (per Postal Service ELM Section 436.73, at the Federal Judgment interest rate) from the date of her removal, January 26, 2007, until June 22, 2009, the time she is set to commence work in the position identified in Paragraph 1(a), above. Said back pay and restoration of benefits shall be made within 60 days the date this Agreement is signed by all the parties. Plaintiff agrees to cooperate with the Postal Service's efforts to timely process this provision. The back pay calculations shall take into account and include any salary increases that Plaintiff would have received, including without limit the PFP pay raises of 5.0% for FY 2007 and 5.0% for FY 2008, had she remained employed in her former Level 17 Supervisor position at Montclair Station. The benefits to be restored shall include all sick and annual leave, time in service for retirement and seniority purposes, insurance, and any other benefits which Plaintiff would have received had she remained employed continually employed. Re-credited annual leave shall be treated as uncapped per the exception to Postal Service ELM Section 436.2.d, with Plaintiff to have up 2 years to use or sell back any excess leave.

(c) Defendant agrees to rescind Plaintiff's removal and to expunge all references to her removal from her Official Personnel File (OPF) within 30

days from the date this Agreement is signed by all the parties.

- (d) Defendant agrees to pay Plaintiff's attorney, Hartley D. Alley, Esq. (Tax EIN 841049937) a lump sum in the amount of \$65,560.00, as and for attorney's fees and costs, within 60 days from the date this Agreement is signed by all the parties. The check for said sum shall be made payable and mailed to: Hartley Alley, Atty., 23107 Fairway Brg., San Antonio, TX 78258-7129. The Postal Service will not withhold any amount from this lump sum for taxes or other reasons, but will report the amount to the IRS on a form 1099 for both Plaintiff and Mr. Alley.
- (e) Defendant agrees that an email will, within 30 days from the date this agreement is signed by all parties, be sent to Dean Granholm, Valerie Martin, Selwyn Epperson, Roland Fuentes and the entire Colorado/Wyoming District Labor Relations staff, with copy to Plaintiff's counsel at [hartleyalley@netzero.net](mailto:hartleyalley@netzero.net), notifying them that Plaintiff's removal has been overturned by the federal district court and attaching a copy of Judge Match's decision of March 16, 2009
- (f) Defendant agrees that, as required by law, it shall not retaliate against or harass Plaintiff on account of her having appealed the removal and having pursued the claims resolved herein.
- (g) The parties shall jointly file a copy of this Settlement Agreement in the MSPB appeal of Plaintiff's removal.

2. In return for the consideration recited in paragraph one, and except as provided in paragraph three below, Plaintiff agrees to dismiss with prejudice any and all

complaints, appeals or claims she may have relating to her employment with the Postal Service, including the above-captioned case, up to the date she signs this Agreement. Plaintiff further agrees that the aforesaid consideration in paragraph one is tendered and accepted in full settlement and satisfaction of any and all claims and demands, of whatever nature, including attorney's fees and costs, that Plaintiff, her heirs, executors, administrators or assigns, had, may have, or may hereafter discover against the Defendant, or the United States of America, its agencies, agents, servants or employees based on events occurring prior to the date this agreement is fully executed, including all claims alleged in this case, and any claims accrued as of the date of this agreement arising out of her employment with the federal government.

3. Both Plaintiff and Defendant submit a joint stipulation for remand to the U.S. District Court (Judge Matsch) requesting the court to remand this case back to the Merit Systems Protection Board with direction for the MSPB to maintain authority to enforce this Agreement, if enforcement is necessary. In the event the court declines to do so, then the parties agree to include a request in the joint stipulation that jurisdiction for enforcement remain with the Court until the parties dismiss the case upon completion of performance under this Settlement Agreement.

4. This agreement shall not constitute an admission of liability or fault on the part of the Defendant.

5. In conjunction with this stipulation, the parties further agree that they will, in conjunction and consistent with Section 3, above, execute and file a Stipulated Motion to Dismiss pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), dismissing this case with prejudice.

6. Plaintiff represents and warrants that she is the sole and lawful owner of all rights, title, and interests in and to every claim and other matter which she purports to release herein, and that she has not heretofore assigned or transferred, or purported or attempted to assign or transfer, to any person or entity any claims or other matters herein released. Plaintiff shall indemnify Defendant, and any of its departments, components, and current or former employees, whether in their official or individual capacities, against, and defend and hold harmless from, any claims arising out of or relating to any such assignment or transfer of any claims or other matters released herein.

7. Compliance with all applicable federal, state, and local tax requirements shall be the sole responsibility of Plaintiff. This Agreement is executed without reliance upon any representation by Defendant as to tax consequences, and Plaintiff is responsible for the payment of all taxes that may be associated with the settlement payments.

8. This Agreement contains the entire agreement between the parties hereto, and Plaintiff acknowledges and agrees that no promise or representation not contained in this Agreement has been made to her, and she acknowledges and represents that this Agreement contains the entire understanding between the parties, and contains all terms and conditions pertaining to the compromise and settlement of the disputes referenced herein. No statement, remark, agreement, or understanding, oral or written, that is not contained herein shall be recognized or enforced, nor does this Agreement reflect any agreed-upon purpose other than the desire of the parties to reach a full and final conclusion of the litigation and to resolve that suit without the time and expense of further litigation.

9. This Agreement cannot be modified or amended except by an instrument in writing, agreed to and signed by the parties, nor shall any provision hereof be waived other than by a written waiver, signed by the parties.

10. This Agreement shall be binding upon and inure to the benefit of Plaintiff and Defendant and their respective heirs, executors, successors, assigns, and personal representatives, including any person, entity, department, or agency succeeding to the interests or obligations of any party hereto, or having an interest herein.

11. The provisions of this Agreement shall be deemed severable, and any invalidity or unenforceability of any one or more of its provisions shall not affect the validity or enforceability of the other provisions herein.

12. Plaintiff acknowledges that she has discussed this Agreement with her counsel, who has explained the Agreement to her, and that she understands all of the terms and conditions of this Agreement. Plaintiff further acknowledges that she has read this Agreement, understands the contents thereof, and executes this Agreement of her own free act and deed. The undersigned represent that they are fully authorized to enter into this agreement.

Cynthia M. Martinez  
Cynthia M. Martinez  
Plaintiff

Date: 6-15-09

DAVID M. GAOUETTE  
Acting United States Attorney

William G. Pharo  
William G. Pharo  
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Date: 6/17/09

  
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Attorney for Plaintiff

Date: 6/16/09

  
Roderick Eves  
United States Postal Service

Date: 6/16/09