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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	OEA Matter No.: 2401-0058-17AF20
GENNIFER CUNNINGHAM,)	
Employee)	
)	Date of Issuance: February 28, 2020
v.)	
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	MONICA DOHNJI, ESQ.
Agency)	Senior Administrative Judge
)	
F. Douglas Harnett, Esq., Employee's Representative		
Lynette Collins, Esq., Agency Representative		

SECOND ADDENDUM DECISION ON ATTORNEY FEES

INTRODUCTION AND PROCEDURAL BACKGROUND

On June 16, 2017, Gennifer Cunningham (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“Agency” or “DCPS”) action of abolishing her position through a Reduction-in-Force (“RIF”), effective August 4, 2017. Employee was an Administrative Aide at Woodrow Wilson Senior High School at the time her position was abolished. On July 19, 2017, Agency filed its Answer to Employee’s Petition for Appeal.

On June 5, 2018, I issued an Initial Decision (“ID”), reversing Agency’s decision to terminate Employee. Agency filed a Petition for Review with the OEA Board. On December 18, 2018, the OEA Board issued an Opinion and Order denying Agency’s Petition for Review, and upholding the ID. Thereafter, on January 17, 2019, Employee’s attorney filed a Motion for Attorney’s Fees. On April 22, 2019, Employee’s attorney filed a Praecipe of Dismissal noting that “... the Parties have reached an agreement to resolve the outstanding fee petition... That agreement has been signed by the parties, and is attached as exhibit 1.”¹ On April 30, 2019, the undersigned Senior Administrative Judge (“SAJ”) issued an Addendum Decision on Attorney Fees, dismissing

¹ Employee’s Praecipe of Dismissal (April 22, 2019).

the January 17, 2019, Motion for Attorney's Fees, based on the settlement agreement entered into by the parties.

On October 3, 2019, after the compliance issue in this matter had been resolved, Employee's representative filed a Second Motion for Attorney's Fees.² Agency filed a Response to Employee's Petition for Attorney Fees on November 4, 2019. Thereafter, this matter was referred to Mediation per the parties' consent. Following a failed attempt at mediation, a Status Conference was convened for January 29, 2020, with both parties in attendance. The record is now closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether Employee's Second Motion for Attorney's Fees and Costs should be dismissed.

ANALYSIS AND CONCLUSIONS OF LAW

Employee filed Employee's Second Motion for Attorney's Fees, noting that it was to recover her cost in obtaining compliance in this matter. Employee's attorney requested "an award of reasonable attorney's fees in the amount of \$20,889.60 for legal work done to obtain compliance with the Final Decision in this matter."³ On November 4, 2019, Agency filed its Response to Employee's Petition for Attorney Fees. Agency argued that, the March 7, 2019, Settlement Agreement entered into by the parties, after Employee's January 17, 2019, Petition for Attorney Fees precludes Employee's representative from seeking additional attorney fees.⁴ Specifically, Agency pointed to Paragraph 5 of the March 7, 2019, Settlement Agreement which stated that "this release and discharge includes all claims resulting from Employee's claim for attorney's fees and expenses for litigating the legality of the termination ... whether manifested or not, together with all direct and indirect consequences thereof which are now known or which may hereafter become known..."⁵ Agency further notes that paragraph five of the March 7, 2019, Settlement Agreement also noted that the "intention is to release DCPS... completely, finally and absolutely from all liabilities whatsoever arising wholly or partially from Employee's claim for attorney fees and expenses for litigating the legality of the [Employee's] termination."⁶

Additionally, Agency asserts that in an email dated March 6, 2019, Employee's representative asked Agency for clarification of the terms within Paragraph three of the March 7, 2019, agreement. Specifically, Employee's representative indicated that he needed clarification regarding the language, "the legality of the termination." Agency states that Employee's representative inquired as to whether the March 7, 2019, Settlement Agreement precluded him from

² An Addendum Decision on Compliance was issued by the undersigned on October 8, 2019.

³ Employee's Second Motion for Attorney's Fees (October 3, 2019).

⁴ Agency's Response to Employee's Petition for Attorney Fees (November 4, 2019).

⁵ *Id.*

⁶ *Id.*

filing a Petition for Enforcement, to which Agency in response, asserted that “all future litigation is precluded.”⁷ In a follow-up email, Employee’s representative stated that “I’m sure you will tell me there is no negotiating this point, correct?” To which Agency responded, “That is correct.”⁸ Agency notes that Employee’s representative reviewed the terms of the Settlement Agreement, inquired whether or not the Settlement Agreement would allow him to request additional attorney fees should a Petition for Enforcement be necessary, and Agency told him he could not. Employee’s representative, after an unsuccessful attempt at negotiating these terms, nonetheless, decided to execute the Settlement Agreement. Consequently, Agency argues that Employee’s representative is barred from seeking additional fees.⁹

Agency further asserts that, pursuant to D.C. Official Code §1-606.08, Employee is not entitled to additional Attorney Fees. Agency explains that Employee is not the prevailing party. Agency highlights that the October 8, 2019, Addendum Decision on Compliance dismissed the Petition for Enforcement, without awarding relief, therefore, Employee is not a prevailing party under D.C. Official Code §1-606.08.¹⁰ Agency also explains that it is not in the interest of justice to award Employee’s representative additional Attorney fees above and beyond what was negotiated within the March 7, 2019, Settlement Agreement. Agency asserts that, after receiving the OEA Board’s decision affirming the undersigned’s ruling reversing Employee’s separation, Agency worked diligently to reinstate Employee and reimburse all back-pay and benefits. Agency maintains that any delay in compliance was as a direct result of Employee.¹¹ Agency also states that the request for fees is unreasonable and demonstrates that sound billing practices were not followed.¹²

On January 10, 2020, Employee filed Employee’s Motion for Leave to File A Reply to DCPS’s Opposition to Second Motion for Attorney’s Fees. Employee’s representative argued that neither he, nor Employee ever intended to waive their right to recover future damages and certainly did not believe that the previous agreement contained such a waiver.¹³ Employee argues that Agency is attempting to ignore the plain text of the Settlement Agreement by stating that it waives any additional fees and expenses for all litigation related to employee’s claims. Employee argues that, Agency ignored the qualifier (“for litigating the legality of the termination”) which immediately follows the phrase “for attorney fees and expenses” each time it appears in the paragraph cited by Agency as supporting the waiver. Employee argues that he understood this to mean the release is limited to the fees and expenses for the subject of the Order and it does not specifically exclude fees and expenses for litigation.¹⁴ Employee states that, if Agency’s intention was to waive all fees that might be incurred, what purpose would the language “for litigating the legality of the termination” serve? Employee asserts that if the parties had intended to preclude fees and expenses for any action to enforce the Order, or otherwise intended the release to cover the

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Employee’s Motion for Leave to File A Reply to DCPS’s Opposition to Second Motion for Attorney’s Fees (January 10, 2020).

¹⁴ *Id.*

entire matter, each reference to the attorney fees and expenses would not have included the specific limitations to the issue of the termination.¹⁵

Furthermore, Employee argues that at the time the settlement agreement was negotiated, compliance issues had already arisen, and Employee's counsel had raised them with the Office in response to requested updates. Employee maintains that the agreement specifies the legality of the termination as the single issue it relates to, and makes no mention of fees for enforcement, fortifies the reading that the contract does not exclude fees and expenses for enforcement activity.¹⁶ Employee's representative reiterated that he read the agreement as releasing fees and expenses only for litigating the legality of the termination.¹⁷ Employee alleges that his understanding of Agency's email response to his question was that future litigation was precluded from the settlement agreement.¹⁸

D.C. Official Code §1-606.06(b) (2001) states in pertinent part that:

If the parties agree to a settlement without a decision on the merits of the case, a settlement agreement, prepared and signed by all parties, shall constitute the final and binding resolution of the appeal, and the [Administrative Judge] shall dismiss the appeal with prejudice.

The parties in the instant matter agreed and executed a settlement agreement with regards to Attorney's fees and costs on March 7, 2019. A review of the March 7, 2019 settlement agreement between the parties highlights in pertinent parts as follows:

*As further consideration for payment of said sum, Employee hereby agrees to indemnify and hold harmless DCPS, its current and former officers agents, servants and employees, against any and all further claims for damages, lien, costs and expenses arising out of Employee's claim for attorney's fees and expenses for litigating the legality of the termination.*¹⁹ (Emphasis added).

Employee expressly agrees, as a further consideration for payment of said sum, that except as set forth in this Agreement, this release and discharge includes all claims resulting from Employee's claim for attorney's fees and expenses for litigating the legality of the termination or this settlement, whether now manifested or not, together with all direct and indirect consequences thereof which are now known or which may hereafter become known, under any theory of liability, the intention hereof being to release and discharge DCPS, its current and former officers, agents, servants or employees, completely, finally and absolutely from all liabilities

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Agency's Response to Employee's Petition for Attorney Fees, *supra*, at Exhibit 16.

whatsoever arising wholly or partially from Employee's claim for attorney's fees and expenses for litigating the legality of the termination of this settlement....²⁰

Based on the negotiated settlement terms as provided in the settlement agreement executed between the parties on March 7, 2019, I find that the settlement agreement precludes the undersigned from deciding the issue of Attorney's fees with regards to all issues pertaining to Employee's June 16, 2017 Petition for Appeal. This includes both direct and indirect consequences arising from the litigation of the June 16, 2017, appeal. The undersigned concludes that the Praeceptum of Compliance filed by Employee on September 30, 2019, was an indirect consequence arising from the litigation of Employee's June 16, 2017, Petition for Appeal, and thus, falls squarely within the negotiated settlement terms.

The parties negotiated the settlement terms and later executed a settlement agreement on March 7, 2019. Specifically, the parties agreed that the settlement agreement covered attorney's fees and expenses for any matter arising out of Employee's June 16, 2017, Petition for appeal – whether now manifested or not, together with all direct and indirect consequences thereof which are now known or which may hereafter become known (emphasis added). In light of the terms of the March 7, 2019, settlement agreement, I find that Agency is absolved from its responsibility to pay Employee additional attorney's fees and expenses, if any. Furthermore, the executed settlement agreement makes it clear that Agency's intention was to be *release[d] and discharge[d] ... , completely, finally and absolutely from all liabilities whatsoever arising wholly or partially from Employee's claim for attorney's fees and expenses for litigating the legality of the termination of this settlement.* Employee's representative was aware of Agency's intention at the time of his signing of this agreement. Accordingly, I conclude that I am estopped from addressing Employee's Second Motion for Attorney's Fees dated October 3, 2019, as the party took care of this issue through the March 7, 2019, settlement agreement. Therefore, pursuant of D.C. Official Code §1-606.06(b), *supra*, the March 7, 2019 Settlement Agreement constitute the final and binding resolution of the appeal, and the undersigned shall dismiss the appeal with prejudice.

ORDER

Based on the foregoing, it is hereby ORDERED that Employee's Second Petition for Attorney's Fees in this matter is DISMISSED.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Senior Administrative Judge

²⁰ *Id.*