

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

DEBORAH B. FREEMAN,)	
Plaintiff,)	Case No. 7:04cv00276
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
JOHN E. POTTER,)	
POSTMASTER GENERAL, et al.,)	By: Samuel G. Wilson
Defendants)	United States District Judge
)	

Plaintiff Deborah B. Freeman, an employee of the defendant United States Postal Service (“Postal Service”), claims that her employer has breached the terms of a Settlement Agreement entered by the parties following a lawsuit in which Freeman had alleged discrimination in violation of Title VII. The court assumes, without deciding, that it has jurisdiction over this case pursuant to 28 U.S.C. § 1331, as an action “arising under” federal law, specifically 42 U.S.C. § 2000e *et. seq.* See EEOC v. The Henry Beck Co., 729 F.2d 301, 305-06 (4th Cir. 1984) (holding that where the EEOC seeks enforcement of a settlement agreement, without attempting to litigate the underlying claim, the action is brought directly under Title VII and district courts have jurisdiction pursuant to 42 U.S.C. § 2000e-5(f)(3)); See also, Morigney v. Engineered Custom Plastics Corp., 820 F. Supp. 987, 988 (D.S.C. 1993) (applying the reasoning of Henry Beck and finding that an action brought by an employee to enforce a settlement agreement is “brought under” Title VII). Freeman initially alleged a breach of contract claim and amended her complaint to add a claim of retaliation under Title VII. The defendants move to dismiss both claims. The court finds that, taking all the allegations of plaintiff’s complaint and amended complaint as true, Freeman has successfully stated a breach of contract claim. The court

lacks jurisdiction over Freeman’s retaliation claim because Freeman has not yet exhausted her administrative remedies.¹ However, the parties have filed a joint motion to stay proceedings until the EEOC renders a final agency decision on her retaliation claim. Accordingly, the court denies the defendants’ motion to dismiss and grants the parties’ joint motion to stay proceedings.

I.

Deborah Freeman, an African-American female, has been an employee of the U.S. Postal Service since 1988. She filed a Title VII action alleging racial and sex discrimination in 2000 in this court. After mediation, the parties entered a Memorandum of Settlement in which Freeman agreed to dismiss her action with prejudice, and the Postal Service agreed they would, among other things, place Freeman in a full-time window clerk position at the Hollins Branch of the Roanoke Post Office. Freeman alleges that following execution of the Settlement Agreement, the Postal Service placed her at the Hollins Branch office, although not as a window clerk. The Postal Service then moved her to a shipping dock at the Home Shopping Network in December 2002, and to the Carrier Annex in 2003. In February 2004, the Postal Service moved her to the Cave Spring Branch, where she is currently assigned as an “unencumbered PS 5 clerk.”

II.

Taking the facts as alleged in the complaint as true, the court finds that Freeman has sufficiently stated a claim for breach of the parties’ Settlement Agreement. A motion to dismiss may be granted only if, “after accepting all well-pleaded allegations in the plaintiff’s complaint as true and drawing all

¹Because the court lacks subject matter jurisdiction, it does not address the substance of Freeman’s retaliation claim in this Memorandum Opinion.

reasonable inferences from those facts in the plaintiff's favor, it appears certain that the plaintiff cannot prove any set of facts in support of his claim entitling him to relief." Edwards v. City of Goldsboro, 178 F.3d 231, 244 (4th Cir. 1999).

The Postal Service does not dispute that it entered into the Settlement Agreement, nor does it deny that it changed Freeman's work location. It contends, however, that it has substantially complied with the terms of the Agreement and that Freeman's reassignment did not constitute a material breach. In addition, the Postal Service argues that, due to an unforeseen change in mail volume, it was impossible to keep Freeman in her position at the Hollins Branch and its performance was, therefore, excused under the doctrine of impracticability. Although these defenses may create an issue of fact concerning interpretation of the terms of the Settlement Agreement, however, they do not make 12(b)(6) dismissal appropriate.

Because Freeman has alleged that the Postal Service was required, under the Settlement Agreement, to assign Freeman to the Hollins Branch, that the Postal Service breached this obligation, and that she was injured as a result, she has successfully stated a breach of contract claim.

III.

The court finds that Freeman has stated a claim for breach of contract and accordingly denies the defendants' motion to dismiss that claim. Further, the court grants the parties' joint motion to stay proceedings on Freeman's retaliation claim, pending a final EEOC decision.

ENTER: This ____ day of March, 2005.

UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

DEBORAH B. FREEMAN,)	
Plaintiff,)	Case No. 7:04cv00276
)	
v.)	<u>ORDER</u>
)	
JOHN E. POTTER,)	
POSTMASTER GENERAL, et al.,)	By: Samuel G. Wilson
Defendants)	United States District Judge
)	

In accordance with the Memorandum Opinion entered on this day, it is hereby **ORDERED** and **ADJUDGED** that Defendants' motion to dismiss Plaintiff's breach of contract claim is **DENIED**. It is further **ORDERED** and **ADJUDGED** that the parties' joint motion to stay proceedings is **GRANTED**.

ENTER: This _____ day of March, 2005.

UNITED STATES DISTRICT JUDGE