



## Press Summary

13 November 2024

### **National Union of Rail, Maritime and Transport Workers and another (Respondents) v Tyne and Wear Passenger Transport Executive T/A Nexus**

**[2024] UKSC 37**

*On appeal from [2022] EWCA Civ 1408*

**Justices:** Lord Lloyd-Jones, Lord Sales, Lord Leggatt, Lord Burrows, Lady Simler.

#### **Background to the Appeal**

This appeal raises questions about whether it is possible to rectify the written record of a collective agreement which is not a legally enforceable contract and whether contracts of employment which incorporate the terms of such a collective agreement can be rectified. It also raises questions about the appropriate parties to such a claim, and whether an employment tribunal has the power to decide it.

Tyne and Wear Passenger Transport Executive, known as “**Nexus**”, operates the Tyne and Wear Metro. Nexus brought a claim against two independent trade unions recognised as entitled to conduct collective bargaining on behalf of its employees. The unions are the National Union of Rail, Maritime and Transport Workers and Unite the Union (“**the Unions**”). Collective agreements negotiated between Nexus and the Unions are not intended to be legally enforceable, but the employment contracts between Nexus and its employees contain a clause which incorporates the terms of such collective agreements as terms of service.

In 2012 a collective agreement was reached between the Unions and Nexus and recorded in a letter stating that Nexus would consolidate a pre-existing entitlement referred to as a “productivity bonus” into the basic pay of the employees, giving them a higher basic salary.

A dispute arose about the meaning of this letter agreement and in 2015 a group of employees brought a claim against Nexus in the employment tribunal (“**the Anderson proceedings**”). Mr Anderson and the other claimants argued that they had been underpaid because, on a proper interpretation of the letter agreement, the effect of consolidating the “productivity bonus” into basic pay was to increase shift allowances which are calculated by reference to basic pay. Nexus denied that this was the correct interpretation of the letter agreement. The employment tribunal upheld the claim but adjourned consideration of the question of remedy.

Nexus appealed but its appeals were ultimately unsuccessful. No hearing in the Anderson proceedings to decide on remedy has yet taken place because those proceedings, and other similar claims brought by other employees, have been stayed pending the outcome of the present proceedings.

In 2020 Nexus began these separate proceedings in the High Court seeking rectification of the letter agreement. Rectification is a remedy which “puts the record straight” by correcting a mistake in a document recording a transaction. The proceedings have been brought against the Unions and not against any employees of Nexus. Nexus claims that the letter agreement as it has been interpreted by the courts in the Anderson proceedings does not accurately record the common subjective intention of Nexus and the Unions. That common intention is said to have been that the consolidation of the productivity bonus into basic pay would not increase the shift allowances. Alternatively, Nexus claims that the letter should be rectified because of an alleged unilateral mistake made by Nexus to the knowledge of the Unions in recording what had been agreed.

The Unions applied to have the claim struck out or summarily dismissed. They argued that: (1) the court has no power to order rectification of a collective agreement which is not legally enforceable; (2) the appropriate defendants to any rectification claim would be the employees, not the Unions; and (3) any claim for rectification ought to have been made in the Anderson proceedings and Nexus is estopped (i.e. prevented) from pursuing such a claim, or it is an abuse of process to do so, now.

The High Court rejected the Unions’ applications. On appeal, the Court of Appeal ruled in favour of the Unions and dismissed the claim. Nexus now appeals to the Supreme Court.

## **Judgment**

The Supreme Court unanimously dismisses the appeal. Lord Leggatt and Lady Simler give the only judgment, with which the other Justices agree.

## **Reasons for the Judgment**

### *Which contracts need to be rectified? [36] – [45]*

The Court of Appeal considered that, in seeking to have the letter agreement (which is not legally enforceable) rectified, Nexus is aiming at the wrong target. It should instead be seeking rectification of the individual contracts of employment with its employees which incorporate the terms of the letter agreement.

The Supreme Court disagrees. There is no scope for arguing that the documents recording the contracts of employment do not accurately record what Nexus and its employees intended them to say and should therefore be rectified. The contracts of employment have exactly the effect which they were intended to have of incorporating the terms of any relevant collective agreement between Nexus and the Unions. If any mistake was made, it was made by Nexus and the Unions in failing accurately to record the terms of their collective agreement. It is therefore the letter recording that agreement which needs to be rectified. The result of incorporating the terms of the letter agreement into the individual contracts of employment is that, if the wording of the letter is rectified, the terms of those contracts will change.

### *Is the letter agreement rectifiable? [46] – [54]*

The Court of Appeal considered that the fact that a collective agreement is legally unenforceable is a barrier to its rectification. Again, the Supreme Court disagrees. The reason why a court will not normally rectify a document recording a legally unenforceable agreement is that it would be futile to do so because rectifying the document will not affect

any legal rights or obligations. However, although the letter agreement is not itself legally enforceable, rectifying it would alter legal rights and obligations: not between the parties to it but indirectly between the employer and employees into whose contracts the terms of the letter agreement are incorporated. There is no reason in principle why, if a mistake has been made in recording the letter agreement, it cannot be rectified.

*Who are the proper defendants? [55] – [68]*

The Supreme Court nevertheless agrees with the Court of Appeal that Nexus has brought its claim for rectification of the letter agreement against the wrong defendants. Proceeding against the Unions and not the employees is improper for two reasons. First, there is no legal dispute between Nexus and the Unions as to the existence or extent of any legal right between them. Second, Nexus is asking the court to make an order which would alter the legal rights of employees without giving them the opportunity to be heard. That is contrary to the most basic principle of procedural justice.

The Supreme Court does not accept that there is any significant practical barrier to bringing a claim for rectification of the letter agreement against employees whose legal rights are affected by the claim. Even if there were, it could not justify departing from the basic legal principle that the proper parties to proceedings are those whose legal rights will be affected by the court's decision. In these circumstances the Court of Appeal was right to dismiss the action, leaving Nexus to bring a fresh action against the employees if it chooses.

*Can the employment tribunal rectify? [69] – [84]*

A question was raised whether the issue of rectification could have been raised by Nexus in the Anderson proceedings which were brought in an employment tribunal. An employment tribunal does not have power to make an order for rectification. However, the issue of rectification could have been raised by Nexus as a defence. This is because, where a relevant mistake is shown, a document can be treated as if it had been rectified for the purpose of determining the parties' legal rights without the need to make a formal order for rectification. This principle applies in the civil courts and there is no reason why it should not apply in proceedings in an employment tribunal.

*Can Nexus raise rectification now against the Anderson claimants? [85] – [92]*

The Supreme Court affirms the decision of the Court of Appeal that it is not open to Nexus to raise the issue of rectification now in the Anderson proceedings at the remedies hearing. To do so would be inconsistent with the decision already made in those proceedings that the claimants' complaints are well founded. It would also be an abuse of process if Nexus were to seek to undo the result of the Anderson proceedings in any fresh action which would deprive the Anderson claimants of their victory in the employment tribunal. Whether Nexus may be precluded from relying on rectification in answer to claims made by other employees is not a question which can be decided on this appeal.

*References in square brackets are to paragraphs in the judgment.*

**NOTE:**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)**