

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

**Case ID: 2022/0180**

## **Case summary**

### **Issues**

1. Is rectification available for a collective agreement which is not intended to be a legally enforceable contract?
2. To raise the issue of rectification, would it be necessary to sue on the individual contracts of employment into which such a collective agreement is incorporated?
3. Does an employment tribunal have the power to reject a complaint on the grounds of rectification?
4. Would it be an abuse of process for Nexus to raise rectification now against the Anderson claimants? Relatedly, would Nexus be precluded from doing so by the doctrines of cause of action estoppel and issue estoppel?
5. Is there a privity of interest between the unions and the Anderson claimants?

### **Facts**

Tyne and Wear Passenger Transport Executive, the Appellant, trades as Nexus. It operates the Tyne and Wear Metro (the "Metro"). The Respondents are National Union Rail, Maritime and Transport Workers (the "RMT") and Unite the Union ("Unite") (together the "Unions").

These proceedings are a sequel to an earlier claim brought against Nexus by a group of employees (the "Anderson proceedings"). The background to the Anderson proceedings was that a collective agreement had been reached between the Unions and Nexus. In the letter of agreement (the "Letter Agreement") Nexus agreed to consolidate a pre-existing entitlement referred to (inaccurately) as a "productivity bonus" into the basic pay of the employees. In the Anderson proceedings the employees successfully argued that on the proper construction of the Letter Agreement their shift allowances were supposed to be calculated as a percentage uplift of their basic salary including the productivity bonus (the "enhanced basis"). As Nexus had been calculating shift allowances on an unenhanced basis, the employees' shift allowances had been underpaid.

As a result of the Anderson proceedings, Nexus brought a claim to rectify the Letter Agreement for common mistake or alternatively unilateral mistake. A trial was held to determine preliminary matters. The Unions argued Nexus is estopped from pursuing its rectification claim since Nexus did not advance the mistake case in the Anderson proceedings. In support of the Unions' application for strike out or alternatively summary judgment, the Unions argued that the rectification claim was an abuse of process, barred by delay, and that the court had no power to rectify the Letter Agreement as it was a collective agreement which was not legally binding or enforceable.

The High Court rejected the Unions' arguments and dismissed the strike-out and summary judgment applications. On appeal, the Court of Appeal ruled in favour of the Unions. Nexus now appeals to the Supreme Court.

### **Judgment appealed**

[\[2022\] EWCA Civ 1408](#)

### **Parties**

**Appellant(s)**

Tyne and Wear Passenger Transport Executive T/A Nexus

**Respondent(s)**

- (1) National Union of Rail
- (2) Maritime and Transport Workers
- (3) Unite the Union

**Appeal****Justices**

Lord Lloyd-Jones, Lord Sales, Lord Leggatt, Lord Burrows, Lady Simler

**Hearing start date**

14 May 2024

**Hearing finish date**

14 May 2024

**Watch hearing**

14 May 2024 [Morning session](#) [Afternoon session](#)