

Thompsons Represents RMT and Unite in Supreme Court Victory on Collective Pay Dispute

The Supreme Court has ruled unanimously in favour of the National Union of Rail, Maritime and Transport Workers (RMT) and Unite the Union (Unite) in proceedings against the operators of Newcastle Metro concerning a long-standing pay dispute.

On 13 November 2024, judgment was handed down in [*Tyne and Wear Passenger Transport Executive t/a Nexus v National Union of Rail, Maritime and Transport Workers and Unite the Union* \[2024\] UKSC 37](#), with the Court dismissing Nexus' appeal wherein it sought to rectify a collective agreement relating to pay negotiations concluded in 2012 (the "**Collective Agreement**"). Nexus argued that the written Collective Agreement did not accurately reflect the actual agreement made by the parties, and on that basis sought the equitable remedy of "rectification", pursuant to which a Court can make an order to the effect that the mistake in the written terms be corrected. The Collective Agreement was not legally binding, as is the case generally for such agreements pursuant to section 179 of the Trade Union and Labour Relations (Consolidation) Act 1992 (unless they expressly state otherwise). However, the terms of the Collective Agreement were incorporated into the individually affected employees' contracts of employment, such that the terms were legally binding under those contracts.

Overturing part of the decision of the Court of Appeal the Supreme Court ruled that it was, in principle, possible to rectify a document that is not legally enforceable if such a document creates legal rights (which was the case here due to the fact that rectifying the Collective Agreement would, in turn, alter employees' employment contracts). However, the Supreme Court nevertheless rejected the claim for rectification on the basis that the claim had been brought against the unions who were not a party to a legally binding agreement as

opposed to against the employees. The effect of the judgment is that Nexus is required to pay more generous shift allowances to employees than it otherwise would have done, in accordance with the express terms of the Collective Agreement.

The Court also took the opportunity to rule for the first time that an Employment Tribunal may, in principle, read a written record of an agreement that does not accurately reflect the agreement between the parties as “rectified” in a wage deduction dispute, even though it technically has no power to order rectification.

Background

Nexus recognised RMT and Unite for the purposes of collective bargaining in relation to the terms and conditions of a grouping of employees who work on the Newcastle Metro. In 2012, Nexus and the Unions agreed a pay deal, pursuant to which Nexus offered a “productivity bonus”, which was consolidated into basic pay. This was recorded in the Collective Agreement which was not legally binding. However, the terms of that Collective Agreement were incorporated into the contracts of employment of the affected employees and became legally binding between the individual employees and the employer.

A dispute subsequently arose about the calculation of shift allowances. Shift allowances are calculated as a percentage uplift on basic pay. The unions on behalf of the employees argued that the uplift should be applied to basic pay including the productivity bonus, whereas Nexus argued that the productivity bonus should be excluded from basic pay and made payment on that basis.

Unlawful deductions from wages proceedings

On 19 June 2015, 80 Claimants brought claims in the Newcastle Employment Tribunal alleging that Nexus' decision to calculate shift allowances excluding the productivity bonus constituted an unlawful deduction from wages under section 13 of the Employment Rights Act 1996. The case turned on the interpretation of the Collective Agreement, with the Employment Tribunal, and subsequently the Court of Appeal, ruling in favour of the employees that, properly construed, the shift allowance uplift should be calculated with reference to basic pay including the productivity bonus.

Nexus' claim for rectification

On 20 May 2020, Nexus brought a High Court claim against RMT and Unite seeking rectification of the Collective Agreement, essentially arguing that it did not accurately reflect the true agreement made by the parties.

At a preliminary hearing, the High Court rejected the Unions' argument that Nexus was estopped from bringing the claim on the basis that the issue and cause of action had already been litigated in the unlawful deductions from wages proceedings. The High Court also rejected the argument that courts cannot order rectification of an agreement that is not legally binding.

The Unions appealed to the Court of Appeal, which ruled in their favour that it was not possible to order rectification of an agreement that was not legally binding. Nexus appealed this issue, among others, to the Supreme Court.

The Supreme Court Judgment

The Supreme Court overruled the Court of Appeal's finding that Collective Agreements are not subject to rectification because they are not legally enforceable in and of themselves, finding that non-legal documents that nevertheless create legal rights are subject to rectification. However, the Court nevertheless rejected the appeal on the basis that Nexus had brought proceedings against the unions and not the affected employees. The Unions had no legal rights under the Collective Agreement and Nexus had no legal rights enforceable against the Unions, meaning they had no basis on which to make a claim. The appropriate defendants would have been the individual employees whose legal rights were engaged. Nexus is therefore required to pay shift allowances on the more favourable terms as set out in the Collective Agreement, as interpreted by the Employment Tribunal.

The Court stated unequivocally that the order sought by Nexus was contrary to procedural justice, on the basis that it was seeking to significantly alter employees' legal rights (by reducing their salaries) in proceedings that did not involve them or give them an opportunity to participate [56]. For Nexus to seek rectification of individuals' employment contracts in this way, it would have to bring proceedings directly against those employees.

The Supreme Court also took the opportunity to declare for the first time that, in claims for unauthorised deductions from wages in the Employment Tribunal, it is permissible for a party to argue that the contract should be deemed rectified if it does not correctly record the terms of the agreement between the parties [82-83]. This is a welcome clarification, as, strictly speaking, the Employment Tribunal does not have the power to order rectification. However, the Court concluded that it was in the interests of justice that, in determining wage deduction disputes, tribunals base their reasoning on the agreement the parties actually made, and not a mistaken record of it.