

Musician Wins Hearing Loss Case

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Facts and background

The Claimant, a professional viola player, employed in an orchestra at the Royal Opera House (ROH), claimed damages for hearing loss, namely acoustic shock.

His case was that he was seated directly in front of the brass section of the orchestra during a rehearsal of Wagner's Ring Cycle on 1 September 2012. The Claimant alleged that during the afternoon rehearsal he was exposed to noise levels which created a risk and resulted in injury to his hearing. At the rehearsal, the noise levels exceeded 130 dB and the Claimant alleged his hearing was irreversibly damaged.

The Control of Noise At Work Regulations 2005 sets out that the:

- Lower Exposure Action Value (EAV) during an 8 hour average of 80 dB(A) was reached within 0.52 hours.
- Higher EAV during an 8 hour average of 85 dB(A) was reached within 1.6 hours.

The average noise exposure during the 2 hours 58 minute measurement period was 92.2 dB(A) LEQ.

The Decision

The claim was heard before HHJ Nicola Davies DBE who found in favour of the Claimant for the following breaches of the 2005 Regulations:

- Regulation 5 - a requirement to carry out an assessment of the risk to the health and safety of employees created by the exposure to noise. The risk assessment prepared by ROH for the production in 2012 was not suitable or sufficient of the risk to comply with Regulation 5.
- Regulation 6 - elimination or control of exposure to noise at the workplace. HHJ Davies found that however laudable the aim to maintain the highest artistic standards, it cannot compromise the standard of care to which the ROH as an employer has to protect the health and safety of its employees when at its workplace.
- Regulation 7 - hearing protection. Failure to fully appreciate or take steps to implement the requirements of hearing protection or properly inform and instruct its Musicians as to the imperative nature of the need to wear protection within what should have been a designated area.
- Regulation 10 - information, instruction and training. The Claimant was not informed nor were the other orchestra players of the mandatory requirement to wear hearing protection when noise was likely to be above the EAV.

Mrs Justice Nicola Davies found that there was a clear factual and causal link between the breaches of the Regulations of 2005 and the high level of noise which ensued at the rehearsal. Mrs Justice Nicola Davies accepted the evidence of Andrew Parker, ENT Surgeon, that the noise levels at the afternoon rehearsal were within the range identified as causing acoustic shock. It was that exposure which resulted in the Claimant sustaining acoustic shock which led to the injury which he sustained and the symptoms which have developed, from which he continues to suffer.

The case has potential implications for the industry and the health and safety of Musicians.

However, it remains to be seen whether this case will be appealed by the ROH. The case is also the first time in which acoustic shock has been recognised as a condition in which can be compensated by the Court.

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