

# Court refuses musicians specific performance of their contracts

```
[et_pb_section admin_label="Section" global_module="136"
fullwidth="on" specialty="off" transparent_background="off"
background_color="#ffffff" allow_player_pause="off"
inner_shadow="off" parallax="off" parallax_method="off"
padding_mobile="off" make_fullwidth="off"
use_custom_width="off" width_unit="on" make_equal="off"
use_custom_gutter="off"] [et_pb_fullwidth_code
global_parent="136" admin_label="Post
Header"] [Page_Header_Start] Employment Law
News [Page_Header_End] [/et_pb_fullwidth_code] [/et_pb_section] [e
t_pb_section admin_label="section"] [et_pb_row
admin_label="row"] [et_pb_column type="3_4"] [et_pb_text
admin_label="Text" background_layout="light"
text_orientation="left" use_border_color="off"
border_color="#ffffff" border_style="solid"]
```

# Court refuses musicians specific performance of their contracts

[post\_details]

## [Social-Share]

[post\_tags]

Musicians in a play at the National Theatre made an application to the High Court for specific performance of

their contracts (i.e. that the High Court should make an order that they be reinstated rather than simply get damages) after their dismissals following a decision that their performances would be replaced by recorded music. The High Court refused to grant the application because such orders should only be granted in exceptional cases and on this occasion, the musicians' interests would be adequately protected by damages.

The musicians were hired by the National Theatre in March 2009 to play their instruments for the production of War Horse. These contracts stated that the arrangement could be terminated by: (i) two weeks notice from the musicians to the National Theatre; (ii) two weeks notice from the National Theatre to the musician of the closure of the production; or (iii) one week's notice to the musician within 26 weeks of press night. In March 2013, the National Theatre decided for creative reasons to use recorded rather than live music. After negotiation, the musicians' roles were drastically reduced but their contracts were not terminated. One year later, the National Theatre sent letters to the musicians giving them notice of the termination of their contracts on grounds of redundancy in two weeks. The reason for this redundancy was the decision to use recorded music in productions.

The musicians made a claim to the High Court for breach of contract and sought specific performance of their contracts. Specific performance is a remedy which requires the party breaching a contract to perform its obligations under it, rather than financially compensating the other party. The High Court refused this application but found that the musicians had a strong claim for breach of contract given that the termination reason was not listed in their employment contracts. It refused a remedy of specific performance on the grounds that the musicians' case was not an exceptional one and there had been a loss of confidence between the National Theatre and the musicians because of the dispute.

Interestingly, the National Theatre also made the argument

that an order for specific performance would interfere with its right to artistic freedom (which is protected under article 10 of the European Convention of Human Rights (ECHR): the right to freedom of expression) and prevent it from continuing the play in the way they thought artistically preferable. Article 10(2) allows an individual's rights to freedom of expression to be restricted to protect the rights of others. However, the High Court held that it would not be necessary or proportionate to interfere with the rights of the National Theatre to protect the rights of the musicians' freedom of expression as the musicians could still continue to play their instruments elsewhere.

*Ashworth and others v the Royal National Theatre [2014] EWHC 1176 (QB)*

```
[/et_pb_text][/et_pb_column][et_pb_column
type="1_4"][et_pb_sidebar      admin_label="Sidebar"
orientation="right" area="sidebar-1" background_layout="light"
remove_border="off"]
[/et_pb_sidebar][[/et_pb_column][[/et_pb_row][[/et_pb_section]
```