CA on appeal from the Employment Appeal Tribunal before Peter Gibson LJ; Laws LJ; Longmore LJ. 2nd February 2004.

JUDGMENT : LORD JUSTICE PETER GIBSON:

1. On 24th March 2003 in **Tasyurdu v Secretary of State for the Home Department** [2003] EWCA Civ 447 Lord Phillips MR (sitting with Sedley LJ), after a renewed application for permission to appeal was withdrawn less than half an hour before the hearing although the decision to withdraw had been taken days earlier, gave a judgment in which he considered what should have happened on such an occasion.

2. In that case there had been an oversight on the part of the solicitor conducting the case for the applicant. The solicitor apologised for not having notified the court when it had been decided that the renewed application would not proceed. The court accepted the apology, but the Master of the Rolls said this:

   "13. The case does, however, give me the opportunity to emphasise that CPR 1.3 places a duty on the parties and their legal advisers to help the court to achieve the overriding objective of civil procedure, which includes the appropriate use of the court's resources. It frustrates that objective if the court is not informed as soon as it is known that a matter listed for hearing will not be effective. Solicitors, and when appropriate counsel, have a duty to see that the Civil Appeals Office is informed that the matter will not proceed as soon as this is known. Indeed, when it is known that a fixture may not proceed, it is helpful if the office can be informed of this. Such information will be treated as given on a without prejudice basis, that is to say the listing will not be altered until it is confirmed that the application or appeal will be withdrawn.

   14. Even if a case settles very late in the day steps should be taken via the Royal Courts of Justice switchboard to notify in advance the clerks of the judges concerned; there is nothing more infuriating than spending the weekend preparing Monday's case only to be told that it had settled late on Friday."

   Sedley LJ associated himself with what the Master of the Rolls said.

3. Despite that case being reported in the Times Law Reports on 16th April, it is apparent from the facts of the present case that that message has not been taken aboard by the profession. The present case is one relating to an appeal from the Employment Appeal Tribunal. It was listed to start this morning at 10.30 and to last for one and a half to two days. The preparation for that case was inevitably going to be considerable if the court was to follow what is now the normal practice of reading the papers thoroughly in advance. We were informed at 9.00 o'clock this morning that the appeal was settled.

4. We have been told by counsel that what happened was this. On Friday at 4.00pm Miss Tuck, appearing for the respondent, spoke to Mr Korn, appearing for the appellant, to inform him about an offer that had been put to the appellant. Matters then were left in the hands of solicitors. Miss Tuck and Mr Korn were informed just before 6pm on Friday that agreement had been reached. Both Miss Tuck and Mr Korn notified their clerks. Their clerks apparently said that it was too late to notify this court, but that the court would be notified at 9am this morning. Neither counsel had read the report of the **Tasyurdu** case. It appears that their solicitors also had not read the report.

5. We have enquired why the Civil Appeals Office was not informed that there were serious negotiations proceeding, at a time on Friday afternoon when it was known that there were such negotiations and when the Civil Appeals Office would have been open. Counsel have recognised that that should have been done. Even at 6pm it would have been possible to contact the switchboard of the Royal Courts of Justice in order to obtain the telephone number of the clerk to the senior presiding judge. The constitution of the court hearing the appeal was known to the parties on Friday. Indeed, it may be that the telephone numbers of the judges themselves might have been obtained in order to impart that information. There was at least the possibility that one or more of the judges would have been in their rooms still at 6pm. But nothing like that was done. We were surprised to be told that counsel were not aware that there was a 24-hour switchboard at the Royal Courts of Justice. How they imagine an urgent injunction is obtainable over a weekend, I do not know.

6. There has been a waste of a considerable amount of judicial time in consequence. In my judgment, there is a professional obligation on those advising parties to litigation to notify the court if there is a likelihood that judicial time will be wasted in preparing for an appeal which has either been settled or is subject to negotiations which may well lead to settlement. Either way the court needs to be told, and needs to be told as soon as possible. Unhappily, that was not done in this case. I hope that this judgment will receive some wider publicity, so that the profession is notified of that obligation and of the availability of a telephone number at the Royal Courts of Justice which would enable this court to be alerted and save the members of the court wasting time.

7. Both Mr Korn and Miss Tuck have very properly apologised for what has occurred, and I would accept that apology.

8. So far as the order which we are asked to make is concerned, it involves the withdrawal of the appeal by consent, following the necessary procedure being pursued when there is a compromise under the Employment Rights Act 1996 and the Disability Discrimination Act 1995. No order for costs is being sought, other than the assessment of costs of the respondent pursuant to the Community Legal Service (Costs) Regulations 2000. I would make that order.

9. **LORD JUSTICE LAWS**: I wish to express my emphatic agreement with everything my Lord has said.

10. **LORD JUSTICE LONGMORE**: I also wish to do exactly the same.

ORDER: Appeal withdrawn by consent, following the necessary procedure being pursued when there is a compromise under the Employment Rights Act and the Disability Discrimination Act 1995; no order for costs, other than the assessment of the respondent's costs pursuant to the Community Legal Service (Costs) Regulations 2000. (Order not part of approved judgment)

MR A KORN (instructed by Messrs Willmett & Co, Maidenhead SL6 1LU) appeared on behalf of the Appellant
MISS R TUCK (instructed by Messrs Addison Madden, Portsmouth PO1 2PS) appeared on behalf of the Respondent