

Dunnett v Railtrack plc (in railway administration)

Court of Appeal, Brooke, Robert Walker and Sedley, LJJ, 22 February 2002

Hard on the heels of the Cowl case came the Dunnett case, emphasising the costs sanctions likely to flow from a blunt refusal to consider ADR.

In Dunnett, the Claimant appealed against the original judgment. At the hearing at which permission to appeal was granted the court told the parties that they should attempt alternative dispute resolution. The defendant simply refused to consider ADR and the matter proceeded to the hearing of the substantive appeal. The appeal was dismissed, that is the defendant won, but received no costs award.

"CPR 1.4 states that the court should further the overriding objective of the CPR by, inter alia, encouraging the parties to use ADR.

Furthermore, CPR 1.3 stated that the parties were required to help the court in furthering the overriding objective. Parties and their lawyers should, therefore, ensure that they are aware that it was one of their duties to fully consider ADR, especially when the court had suggested it, and not merely to flatly turn it down. To flatly turn down ADR could place the party doing so at risk of adverse consequences in costs. In the instant case, given that the defendant's refusal to consider ADR had occurred prior to the costs of the appeal having been incurred, no order as to costs would be made in the appeal."

(Thanks to Butterworths LawDirect for the extract).

ADR is not likely to become mandatory in this jurisdiction, but it can be ignored no more than a Part 36 offer to settle