



An Binse Achomhairc Fostaíochta  
Employment Appeals Tribunal

**AN BINSE ACHOMHAIRC FOSTAÍOCHTA**

**THE EMPLOYMENT APPEALS  
TRIBUNAL**

**FORTIETH**

**ANNUAL REPORT**

**2007**



**AN BINSE ACHOMHAIRC FOSTAÍOCHTA**

**THE EMPLOYMENT APPEALS TRIBUNAL**

**FORTIETH ANNUAL REPORT**

**2007**

**Submitted to the**

**Minister for Enterprise, Trade and Employment**

**in pursuance of**

**Section 39(18) of the Redundancy Payments Act, 1967**



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**FORTIETH ANNUAL REPORT OF  
THE EMPLOYMENT APPEALS TRIBUNAL FOR YEAR ENDING  
31ST DECEMBER 2007**

**Section 1**

*Corporate Statement and Activities for 2007*



## **Section 1: Corporate Statement and Activities for 2007**

### **Introduction**

2007 was a landmark year in the history of the Employment Appeals Tribunal.

The Redundancy Payments Act of 1967, which established the Redundancy Appeals Tribunal, was enacted on 18<sup>th</sup> December 1967. At the time, the creation of the Tribunal was considered an innovative move, by the State, in the area of employment rights. It was set up to ensure that a worker's statutory entitlement to redundancy was given the force, as well as the full protection of the law. The Act thus established a forum within which the ordinary 'man in the street' could refer a claim to have those rights upheld. Apart from its continuing responsibility to hear appeals under the Redundancy Payments Acts, today, under its revised title, the Employment Appeals Tribunal now deals with fifteen other separate pieces of legislation (see complete list below). These range from claims for unfair dismissal to minimum notice, as well as hearing appeals from decisions and recommendations of the Rights Commissioner Service of the Labour Relations Commission.

The inaugural meeting of the first Redundancy Appeals Tribunal took place on 22<sup>nd</sup> March 1968, under the guardianship and protection of the first sixteen Members appointed to the Tribunal. The first Chairman, Mr. John Gleeson, led the Tribunal. It heard its first appeal on 18<sup>th</sup> April 1968. Between that date and 31<sup>st</sup> December 1968, the Tribunal sat on seventy-five (75) days and heard a total of one hundred and thirty three (133) appeals. Eighty-three (83) of those appeals were heard in Dublin, and the remaining fifty appeals (50) were heard at various other centres around the country. From the start, then, it was clear that the Tribunal would have a countrywide and therefore a national dimension to its work. Forty years on, the Employment Appeals Tribunal continues the work started by the Tribunal's 'founding fathers'. Indeed, instead of its early base of sixteen (16) Members, there are now one hundred and sixteen (116) Members of the Tribunal (See Appendix 1).

### **Our Mission Statement**

As envisaged in 1967, the Employment Appeals Tribunal remains an independent body established to provide a speedy, inexpensive and relatively informal means for the adjudication of disputes on employment rights under the body of legislation that comes within the scope of the Tribunal. It is our continuing goal that customers using the services of the Tribunal will be satisfied overall with the service they have received from the Tribunal.



The Tribunal remains as committed today, as it did on its establishment day, to the impartial adjudication of disputes between parties.

### ➤ **Our work**

The Tribunal was established under Section 39 of the Redundancy Payments Act, 1967 and, up to 1977, was known as the Redundancy Appeals Tribunal. In 1977, under Section 18 of the Unfair Dismissals Act 1977, the name of the Tribunal was changed to the Employment Appeals Tribunal.

The Tribunal was originally set up to adjudicate in disputes about redundancy between employees and employers and between employees or employers and the Minister for Labour (now Enterprise, Trade and Employment) or a Deciding Officer. The scope of the Tribunal was extended over the years and now, in addition to disputes under the **Redundancy Payments Acts, 1967 to 2007**, it also deals with disputes under the following legislation:

**Minimum Notice and Terms of Employment Acts, 1973 to 2001;**  
**Unfair Dismissals Acts, 1977 to 2001;**  
**Maternity Protection Act, 1994;**  
**Protection of Employees (Employers' Insolvency) Acts, 1984 to 2001;**  
**Payment of Wages Act, 1991;**  
**Terms of Employment (Information) Act, 1994 and 2001;**  
**Adoptive Leave Act, 1995;**  
**Protection of Young Persons (Employment) Act, 1996;**  
**Organisation of Working Time Act, 1997;**  
**Parental Leave Act, 1998;**  
**Protections for Persons Reporting Child Abuse Act, 1998;**  
**European Communities (Protection of Employment) Regulations, 2000;**  
**European Communities (Protection of Employees on Transfer of Undertakings) Regulations, 2003;**  
**Carer's Leave Act, 2001;**  
**Competition Act, 2002; and the**  
**Civil Service Regulation (Amendment) Act, 2005.**

### ➤ **Composition of the Tribunal**

The Tribunal consists of a Chairman and thirty-five Vice-Chairmen and a panel of eighty other members, forty nominated by the Irish Congress of Trade Unions and forty by organisations representative of employers. The Redundancy Payments Act, 1979 provides for the appointment of additional Vice-Chairmen and Members whenever the Minister for Enterprise, Trade and Employment is of the opinion that such appointments are necessary for the speedy dispatch of the business of the Tribunal.



The Tribunal acts in Divisions, each consisting of either the Chairman or a Vice-Chairman and two other members, one drawn from the employers' side of the panel and one from the trade union side. A Vice-Chairman of the Tribunal, when acting as Chairman (at the request of the Minister or the Chairman) has all the powers of the Chairman. Appeals are heard in public unless the Tribunal, on the application of either party and in the exercise of its discretion, decides that the hearing be in private.

The current Membership of the Tribunal is listed at Appendix 1.

### ➤ **The Secretariat**

The Secretariat is responsible for the administration of claims referred to the Tribunal under various employment rights legislation. Its role is to provide administrative support to the Tribunal in its adjudication on disputes between employees and employers.

Civil Servants assigned by the Department of Enterprise, Trade and Employment staff the Secretariat of the Tribunal. Officers of the secretariat process applications from the date of receipt and act as secretaries at hearings. Secretaries also draft determinations following Tribunal deliberations, for consideration by the Tribunal and notify the parties concerned of the decisions or determinations of the Tribunal.

The Secretary to the Tribunal is Mr. Dominic McBride.

## **Tribunal's activities during 2007**

### ➤ **2006 Annual General Meeting**

The 2006 Annual General Meeting of the Tribunal took place in Tullamore, Co. Offaly on 16<sup>th</sup> January 2007.

### ➤ **Appointment of Members to the Tribunal in 2007**

The term of office of the Tribunal, which was appointed on 30<sup>th</sup> January 2007, will run until 29<sup>th</sup> January 2010. The Chairman met with newly appointed Members on a number of occasions during 2007.

### ➤ **2007 Annual General Meeting**

The 2007 Annual General Meeting of the Tribunal took place in Dublin Castle Conference Centre, on 18<sup>th</sup> December 2007. The AGM coincided with the 40<sup>th</sup> anniversary of the establishment of the Tribunal.



### ➤ **2007 Statistics: An Overview**

There were nine hundred and twenty-four (924) sittings of the Tribunal, held at forty separate locations (40), during 2007. Of these, four hundred and four (404) sittings took place in Dublin, and five hundred and twenty (520) sittings were held in provincial areas.

The total number of claims referred to the Tribunal either directly, or an appeal from recommendations and decisions of the Rights' Commissioner Service, in 2007, was 3,173. The Tribunal disposed of 2,807 claims during the year.

The annual average waiting period to have a claim heard was twenty (20) weeks in Dublin, and was fifty-one (51) weeks in provincial areas at year's end. While the Tribunal made every effort to list cases as quickly as was feasible, it was constrained in its efforts to do so by the limited staffing resources assigned to the Tribunal.

Details relating to the work of the Tribunal in 2007, and the statistical data upon which this Report is based are outlined in *Section 2: Claims Referred and Disposed of by the Tribunal in 2007* and in *Section 3: Membership and Statistics*.

## **Services undertaken by the Tribunal during 2007**

### ➤ **Employment Appeals Tribunal Procedures Review Group**

In February 2007 the Minister for Labour Affairs, Tony Killeen TD, set up a group to examine the procedures of the EAT with the aim of improving its services to its customers.

The review group was made up of the EAT, Department officials and representatives nominated by ICTU and IBEC and chaired by Mr. Sean O'Riordan, Vice-Chairman of the Tribunal, and former General Secretary of the Association of Higher Civil Servants.

The Group made a number of recommendations and also identified other issues outside of its remit, which it recommended warranted further consideration.

The Group submitted its report to the Minister in June 2007.





➤ **Customer Service and Charter**

The Tribunal is committed to quality customer service, and to deliver a service that is both effective and efficient, and which at all times is provided in a courteous manner and with the minimum of delay. The Tribunal respects the rights of all parties to a claim. A description of the services provided by the Tribunal and how to avail of them, the contact points for them, relevant publications and frequently asked questions are all available on the website at [www.eatribunal.ie](http://www.eatribunal.ie).

An information booklet on the Tribunal, as well as *Guidelines for Practitioners appearing before the Tribunal* are available free of charge from the Tribunal Secretariat, as well as the Information Unit, Department of Enterprise, Trade and Employment. These booklets are issued to all parties to unfair dismissal disputes prior to hearings. The Tribunal has updated the latter Booklet, in line with the recommendations set out in the Final Report of the Tribunal's Internal Review Group.

The Tribunal maintains a Register of its Decisions and Determinations. The Register is open for inspection, free of charge, by any member of the public during normal business hours at the office of the Secretariat, Employment Appeals Tribunal, Davitt House, 65a Adelaide Road, Dublin 2.

It is our goal that customers will be satisfied with the level of service they receive from the Tribunal. Comments may be sent to the Tribunal's Customer Services Manager, Employment Appeals Tribunal, Davitt House, 65a Adelaide Road, Dublin 2, or by email to: [eat@entemp.ie](mailto:eat@entemp.ie). An online comment card is also available on the Tribunal's website.

➤ **Information Technology: EAT Website and EAT online services in 2007**

Developments on the Tribunal's Information Technology services were reported upon in the Annual Reports in 2005 and in 2006.

There were 3.8m hits on the website between its launch date on 3<sup>rd</sup> April 2006 to end 2007, which is a very favourable outcome over the period. The Tribunal's website was nominated for an eGovernment award in December 2007.

A description of the services provided by the Tribunal and how to avail of them, the contact points for them, relevant publications and frequently asked questions are available on the website at [www.eatribunal.ie](http://www.eatribunal.ie).



**EATOS – the EAT online services** - forms part of the Tribunal's ongoing Information project, Phase 2 of which – *eDecisions* – came under consideration between Autumn 2006 and Summer 2007, work on which is ongoing.

It is envisaged that work on Phase 3 of the IT project – *eApplications* – will commence in 2008.

➤ **Freedom of Information Act 1997**

The Freedom of Information Act 1997 (as amended in 2003), when applied to the Tribunal, will cover the administrative functions only of the Tribunal. All information of a personal nature will continue to be protected personal information as defined by the Data Protection Act, 1988 and 2003.

➤ **European Association of Labour Court Judges**

The Tribunal fosters and continues to build upon the working relationship that already exists between it, and practitioners in employment law in Europe.

Representatives from the Tribunal attended the annual conference of the European Association of Labour Court Judges in 2007. The conference took place in Oslo, Norway, from 28<sup>th</sup> June to 1<sup>st</sup> July 2007.

➤ **“School's Out: Learning in the Workplace”**

It is not unusual for students to visit the Employment Appeals Tribunal, or to seek information on the role and operation of the Tribunal. While such requests may be formally presented to the Secretariat, it is not unusual for small groups of students to appear on any given day and sit in on a hearing. As Tribunal hearings are heard in public, this is quite in order.

In line with its customer service initiatives, in 2007, the Tribunal welcomed first and repeat visits from various educational establishments, under the auspices of its programme entitled *“School's Out: Learning in the Workplace”*. This project is aimed primarily at students in 2<sup>nd</sup> and 3<sup>rd</sup> level educational establishments, to educate and inform them on the importance of employment rights in Ireland. It gives students an opportunity to visit the Tribunal and to experience, at first hand, the procedures of the Tribunal. The programme has received very favourable comments and feedback from the various groups that visited the Tribunal during the year.



The Tribunal also welcomed visits from voluntary sector groups, in particular groups from the Citizens' Information Centres, and from community law groups.

***“School’s Out: Learning in the Workplace”*** will be explored in greater detail by the Tribunal, with a view to initiating discussions with the National Council for Curriculum Assessment (NCCA) in order to make it more widely available to schools and colleges. The NCCA *“plays a key role in shaping a world-class education system that meets the needs of all learners, supports their participation in communities and in society, and contributes to the development of the knowledge society in Ireland”*. The Tribunal, in launching this programme, wishes to play its part.

## **Conclusion**

From its first steps, in 1967, and throughout the forty years of its existence, the Tribunal has performed an important public service, in bringing a human face to the complex field of employment law. It is extremely gratifying to acknowledge in this, the 40<sup>th</sup> Annual Report of the Tribunal, the commitment and dedicated service, of current and past Members and staff, all of whom have helped the many individuals who have passed through the Tribunal since it was established on 18<sup>th</sup> December 1967.



**FORTIETH ANNUAL REPORT OF  
THE EMPLOYMENT APPEALS TRIBUNAL FOR YEAR ENDING  
31ST DECEMBER 2007**

**Section 2**

***Appeals and Claims Referred and Disposed of by the Tribunal in 2007***



**Appeals and Claims referred to the Tribunal During 2007**

<b>Legislation</b>	<b>2006</b>	<b>2007</b>
	<b>No.</b>	<b>No.</b>
Minimum Notice and Terms of Employment Acts	858	869
Unfair Dismissals Acts (*This figure includes 75 Appeals against Rights Commissioners' Recommendation)	1291	1127*
Redundancy Payments Acts	680	637
Protection of Employees (Employers' Insolvency) Acts	5	3
Maternity Protection Act	-	1
Payment of Wages Act (Appeals against Rights Commissioners' Decisions)	101	94
Terms of Employment (Information) Act (Appeals against Rights Commissioners' Recommendations)	42	64
Adoptive Leave Act (Appeals against Rights Commissioners' Recommendations)	-	-
Protection of Young Persons (Employment) Act (Appeals against Rights Commissioner's Recommendations)	-	-
Organisation of Working Time Act	403	366
Parental Leave Act (Appeals against Rights Commissioners' Decisions)	4	1
Protections for Person Reporting Child Abuse Act (Appeals against Rights Commissioners' Decisions)	-	-
European Communities (Protection of Employees on Transfer of Undertakings) Regulations, 2003 (Appeals against Rights Commissioners' Decisions)	95	11
European Communities (Protection of Employment) Regulations, 2000 (Appeals against Rights Commissioners' Decisions)	1	-
Carer's Leave Act (Appeals against Rights Commissioners' Decisions)	-	-
Competition Act, 2002	-	-
Civil Service Regulation (Amendment) Act, 2005	-	-
<b>TOTAL</b>	<b>3,480</b>	<b>3,173</b>



## REDUNDANCY PAYMENTS ACTS 1967 TO 2007

Under the Redundancy Payments Act, 2003 an eligible employee is entitled to two weeks statutory redundancy payment for every year of service together with a bonus. The majority of the claims disposed of by the Tribunal under these Acts were claims by employees for redundancy payments on the grounds that they were dismissed by reason of redundancy. Other areas of dispute relate to questions of whether alternative employment offered was suitable; associated companies; change of ownership of trade or business; continuity of employment; lay-off and short-time; calculation of amount of lump sums and normal weekly remuneration.

Of the **637** claims disposed of **170** were allowed, **99** were dismissed, **97** were withdrawn during hearing and **180** were withdrawn prior to hearing.

## MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS 1973 To 2001

In 2003, the Protection of Employees (Employers' Insolvency) Acts, 1984 and 2001 were amended to allow claims for statutory notice entitlements, where the employer is insolvent, to be made directly to the Insolvency Payments Unit of the Department of Enterprise, Trade and Employment, for payment from the Social Insurance Fund, without recourse to the Tribunal. The Civil Service Regulation (Amendment) Act 2005 extends the provisions of the Minimum Notice and Terms of Employment to civil servants as of 4<sup>th</sup> July 2006.

Of the **869** claims disposed of under the Minimum Notice and Terms of Employment Acts **178** were allowed, **132** were dismissed, **193** were withdrawn during hearing and **254** were withdrawn prior to hearing.

## UNFAIR DISMISSALS ACTS, 1977 To 2001

The Unfair Dismissals Act, 1977 was a major development in Irish employment law. It provides remedies for employees who are found by the Tribunal to have been unfairly dismissed from their employment. The remedies under the Act are: re-instatement, re-engagement or compensation up to a maximum of 104 weeks' remuneration. Claims for unfair dismissal may be initiated with the Tribunal or with a Rights Commissioner. A claim under this Act may only be brought to the Tribunal if one of the parties objects in writing to a Rights Commissioner hearing the claim.



The Unfair Dismissals Acts now apply to most state employees including most civil servants. The exclusion from the Acts for most state employees was removed by the Civil Service Regulation (Amendment Act) 2005 and the relevant sections became operational on 4<sup>th</sup> July 2006.

Where a claim for unfair dismissal is initiated with a Rights Commissioner either party may appeal the Rights Commissioner's Recommendation to the Tribunal within six weeks of the date the Recommendation was communicated to the parties concerned.

### **Outcome of Claims and Appeals under the Unfair Dismissals Acts**

#### **Direct Claims**

Of the total of **911** claims disposed of **140** were allowed, **170** were dismissed, **315** were withdrawn during hearing and **286** were withdrawn prior to hearing.

#### **Appeals against Recommendations of Rights Commissioners**

**75** cases were appealed to the Tribunal during 2007.

Of the **84** appeals against the Recommendations of Rights Commissioners disposed of by the Tribunal **11** were upheld, **9** were upset, **7** were varied and **57** were withdrawn.

#### **Claims for the Implementation where the Recommendations of the Rights Commissioners were not carried out**

**22** claims were referred to the Tribunal for implementation during 2007. Of the **29** claims disposed of **22** claims were upheld and **7** claims were withdrawn.

#### **Forms of Redress**

The Tribunal awarded compensation amounting to **€1,463,224.16** in **201** cases. The average compensation awarded by the Tribunal was **€7279.72**. Re-instatement was ordered in **1** case and re-engagement was ordered in **4** cases. The distribution of compensation awarded by the Tribunal is shown in **Annexe 2**.

### **MATERNITY PROTECTION ACT 1994**

Disputes concerning entitlements under the Act must be brought to a Rights Commissioner in the first instance and then to the Tribunal by way of an appeal against the Rights Commissioner's Recommendation.

**1** appeal was referred to the Tribunal in 2007. There were no cases disposed of during 2007.



## **PROTECTION OF EMPLOYEES (EMPLOYERS' INSOLVENCY) ACTS**

### **1984 To 2001**

Financial entitlements of employees who lose their jobs as a result of their employers' insolvency are substantially protected under the 1984 Act as amended. Claims under the Act as amended take the form of complaints against decisions of the Minister for Enterprise, Trade and Employment to refuse all or part of a claim for payment in respect of arrears of wages, arrears of sick pay, arrears of holiday pay or payment of unpaid contributions to occupational pension schemes. Where a doubt exists as to whether a claim is allowable or not, the Minister may refer the claim to the Tribunal for a decision. Such claims are paid out of the Social Insurance Fund.

The European Communities (Protection of Employees (Employers' Insolvency)) Regulations 2005, S.I.630 of 2005 has extended the Insolvency Payments Scheme to include all awards made by the Tribunal<sup>1</sup>. This statutory instrument also extends cover to employees who are employed in Ireland by an employer who has become insolvent under the laws, regulations and administrative procedures of another member state.

**5** complaints were disposed of, and of these **4** were allowed and **1** was dismissed.

## **PAYMENT OF WAGES ACT 1991**

The Act establishes a range of rights for employees relating to the payment of their wages: a right to a negotiable mode of wage payment, a right to a written statement of wages and deductions, and protection against unlawful deductions from wages. The Act allows for an appeal to be made to the Tribunal against the decision of a Rights Commissioners on complaints in relation to an unlawful deduction from wages.

Of the **106** appeals disposed of by the Tribunal **35** were upheld, **13** were upset, **6** were varied and **52** were withdrawn.

## **TERMS OF EMPLOYMENT (INFORMATION) ACT 1994 AND 2001**

The main purpose of this Act is to impose an obligation on employers to provide a written statement to employees setting out certain particulars of the employees' terms of employment.

A dispute under the Act must first be brought before a Rights Commissioner. It may then be brought before the Tribunal by way of an appeal against the Recommendation of the Rights Commissioner in the matter.

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<sup>1</sup> Awards made by the Tribunal under the Redundancy Payments Acts are also paid out of the Social Insurance Fund.





### **Outcome of Appeals**

Of the **38** appeals disposed of by the Tribunal **6** were upheld, **5** were upset, **2** were varied and **15** were withdrawn.

### **Outcome of Claims for Implementation where the Recommendations of the Rights Commissioners were not carried out**

Of the **18** claims disposed of by the Tribunal **10** were upheld and **0** were upset and **8** were withdrawn.

## **ADOPTIVE LEAVE ACT 1995**

The purpose of this Act is to entitle female employees, and in certain circumstances male employees, to employment leave for the purpose of child adoption. A dispute under the Act must first be brought before a Rights Commissioner. It may then be appealed to the Tribunal by way of an appeal against the decision of the Rights Commissioner in the matter.

There were no appeals to the Tribunal during the year ending 31st December 2007.

## **PROTECTION OF YOUNG PERSONS (EMPLOYMENT) ACT 1996**

This Act provides that the parent or guardian of a child or a young person may present a complaint to a Rights Commissioner that an employer has contravened section 13 (preservation of existing rates of pay and conditions) or section 17 (refusal to co-operate with the employer in breaching the Act). An employer or an employee may appeal to the Tribunal from a Recommendation of a Rights Commissioner.

There were no appeals to the Tribunal during the year ending 31st December 2007.

## **ORGANISATION OF WORKING TIME ACT 1997**

Section 39 of the Organisation of Working Time Act provides for a solution to difficulties encountered with the enforcement of decisions of the Employment Appeals Tribunal and other specified bodies under the legislation administered by it where details relating to an employer are incorrectly set out in a Tribunal decision. Section 40 allows an employee or his/her trade union to include a referral of a holiday complaint along with any proceedings being taken to the Tribunal in respect of any legislation coming within its scope.



There were **335** claims disposed of by the Tribunal during the year ending 31st December 2007. Of these **53** were allowed, **58** were dismissed, **103** were withdrawn during hearing and **121** were withdrawn prior to hearing.

## **PARENTAL LEAVE ACT 1998**

The Parental Leave Act, 1998 came into operation on 3rd December 1998. The Act provides for an entitlement for men and women to avail of unpaid leave from employment to enable them to take care of their young children, and for limited paid leave (*force majeure* leave) to enable employees to deal with family emergencies resulting from injury or illness of certain family members.

Employees and employers are entitled to refer a dispute in relation to an entitlement under the Act to a Rights Commissioner. A reference to the Rights Commissioner concerning a dispute under the Act must be made in writing within 6 months of the occurrence of the dispute. However, disputes concerning the dismissal of an employee are dealt with under the provisions of the Unfair Dismissals Acts 1977 to 2001.

The Tribunal disposed of **3** appeals in 2007, all of which were withdrawn.

## **PROTECTIONS FOR PERSONS REPORTING CHILD ABUSE ACT 1998**

The purpose of this Act is to provide protection from penalisation by their employers of persons who report child abuse “reasonably and in good faith” to designated officers of health boards or any member of the Garda Síochána. The avenue of redress for such a person is by way of complaint to a Rights Commissioner. There is also provision for an appeal from the Rights Commissioner by either party to the Employment Appeals Tribunal. The Act came into operation on 23rd January 1999.

There were no appeals to the Tribunal during the year ending 31<sup>st</sup> December 2007.

## **EUROPEAN COMMUNITIES (PROTECTION OF EMPLOYMENT)**

### **REGULATIONS 2000**

These Regulations amend the Protection of Employment Act 1977, to provide for representation of, and consultation with employees in the absence of a trade union, staff association or excepted body; to provide for a right of complaint to a Rights Commissioner where an employer contravenes section 9 or 10 (information and consultation of employees) and to provide for increases in the levels of fines for offences.



There is a provision for the Rights Commissioner's decision to be appealed to the Tribunal within six weeks of the date that the decision was communicated to the parties. Where a Rights Commissioner's decision has not been carried out a case for implementation may be referred after the six-week period.

There were no appeals to the Tribunal during the year ending 31<sup>st</sup> December 2007.

## **EUROPEAN COMMUNITIES (PROTECTION OF EMPLOYEES ON TRANSFER OF UNDERTAKINGS) REGULATIONS 2003**

These came into force on the 11<sup>th</sup> April 2003. They revoke and replace the European Communities (Safeguarding of Employees' Rights on Transfer of Undertakings) Regulations 1980, and the European Communities (Safeguarding of Employees' Rights on Transfer of Undertakings) (Amendment) Regulations 2000. They provide for representation of, and consultation with employees in the absence of a trade union, staff association or excepted body. They also provide for a right of complaint to a Rights Commissioner where an employer contravenes Regulation 8 (the information and consultation provision) and they provide for increases in the levels of fines for offences.

There is a provision for the Rights Commissioner's decision to be appealed to the Tribunal within six weeks of the date that the decision was communicated to the parties. Where a Rights Commissioner's decision has not been carried out a claim for implementation may be referred after the six-week period.

**11** appeals were referred to the Tribunal during the year ending 31<sup>st</sup> December 2007. There were no appeals disposed of during the period under review.

## **CARER'S LEAVE ACT 2001**

This Act provides for the entitlement of employees to avail of unpaid carer's leave from their employment to enable them to care personally for persons who have been certified by the Department of Social and Family Affairs as requiring full time care and attention.

The decision of the Rights Commissioner may be appealed to the Tribunal within 4 weeks of the date the decision was communicated to the parties. This time limit may be extended for a further period not exceeding six weeks if the Tribunal considers it reasonable to do so having regard to all the circumstances.

There were no appeals to the Tribunal during the year ending 31<sup>st</sup> December 2007.



## COMPETITION ACT 2002

The Competition Act 2002 consolidated the existing competition and mergers legislation. Section 50 (3) of the Act provides protection for an employee, from penalisation by the employer, where the employee acting reasonably and in good faith reports a breach of the Act. Schedule 3 of the Act sets out the avenue for redress, which is by way of complaint to a Rights Commissioner and an appeal lies to the Employment Appeals Tribunal.

There were no appeals to the Tribunal during the year ending 31<sup>st</sup> December 2007

## CIVIL SERVICE REGULATION (AMENDMENT) ACT, 2005

Sections in the Civil Service Regulation (Amendment) Act 2005 relating to amendments to the Unfair Dismissals Acts and Minimum Notice Acts commenced on 4<sup>th</sup> July 2006.

## AVERAGE WAITING PERIOD FOR UNFAIR DISMISSAL CASES TO COME FOR HEARING TO THE TRIBUNAL

The annual average waiting period for a case to come for hearing before the Tribunal was approximately **20 weeks** in Dublin and **51 weeks** in provincial areas.

## APPEALS TO HIGHER COURTS

Determinations of the Tribunal may be appealed to the Higher Courts within a specified timeframe from the date on which a determination is communicated to the parties. The procedure for appealing Tribunal determinations is set out in regulations made under the Courts' Rules.

In 2007, the Tribunal was notified that **1** case was appealed under judicial review proceedings to the High Court. No information is available on the outcome of this appeal.

## APPEALS TO CIRCUIT COURTS

The regulations provide a means for the Tribunal to be informed of the referral and result of cases appealed to the Circuit Courts. The Tribunal notes that under the regulations it was informed directly that **77** determinations of the Tribunal in unfair dismissals cases were referred on appeal to the Circuit Courts in 2007.



Based upon information forwarded by the Circuit Courts, however, the Tribunal understands that **77** determinations of the Tribunal in unfair dismissals cases were appealed to the Circuit Courts in 2007. From the information submitted by the Circuit Court offices in respect of these cases, **15** were upheld, **11** were struck out, **2** were not determined, **1** was withdrawn, and **20** were pending. No information is available in respect of the remaining **28** cases.

### NUMBER OF TRIBUNAL SITTINGS

During the year under review, Divisions of the Tribunal sat on **224** days at **40** different venues throughout the country. On **219** of these days, **2** or more Divisions of the Tribunal sat. The total number of sittings was **924** (**404** in Dublin and **520** in the Provinces). The number of sittings at each venue varied from a single sitting at a number of venues in the Provinces to **404** in Dublin. Details of the venues and the number of sittings at each venue are shown in **Annexe 3(A)**. Particulars of Tribunal sittings in 2007 are shown at **Annexe 3(B)**.

### NUMBER OF POSTPONEMENTS

Cases are set down for hearing and dates notified to the parties, on average five to six weeks in advance of this. Postponements may be granted only in exceptional circumstances. If a postponement is sought immediately or within 5 working days of receiving the notice of hearing and the consent of the other party to the case has been obtained, it may be granted. If a postponement is sought later and/or without the consent of the other party it is highly likely to be refused. This setting down system, designed primarily for the convenience of parties, renders some applications for postponements inevitable. Postponements, which are applied for too close to the date of hearing and are granted, result in the loss of scheduled Tribunal sitting time. This loss of time adversely affects the setting down system, increases costs, and results in further delays between the date of referral of a claim and the date of hearing for all claimants.

In 2007, the total number of postponement applications was **395** of which **282** were granted and **113** were refused. There were **83.5** lost sittings days of divisions due to postponements in 2007.

### REPRESENTATION AT HEARINGS

A party to an application may appear and be heard in person or be represented by counsel or solicitor or by a representative of a trade union or by an employers' association or, with the leave of the Tribunal, by any other person. Any party to a case may have one or more representative(s) acting on its behalf. Details of the representation at hearings are as follows:

The total number of cases heard by the Tribunal under the various Acts or combination of Acts in 2007 where the parties had representation was **962**.



- **988** employee parties were represented (**247** by trade unions, **636** by legal representation and **105** by other persons).
- **758** employer parties were represented (**54** by employers' associations, **527** by legal representation and **177** by other persons).

The total number of cases heard by the Tribunal under the Unfair Dismissals Acts, 1977 to 2001 where the parties had representation was **568**.

- **664** employee parties were represented (**91** by trade unions, **523** by legal representation and **50** by other persons).
- **577** employer parties were represented (**46** by employers' associations, **416** by legal representation and **115** by other persons).

**Kate T. O'Mahony**

**Chairman**



**FORTIETH ANNUAL REPORT OF  
THE EMPLOYMENT APPEALS TRIBUNAL FOR YEAR ENDING  
31ST DECEMBER 2007**

**Section 3**

***Membership and Statistics***



## APPENDICES

- ANNEXE 1** Membership of the Tribunal at 31<sup>st</sup> December 2007.
- ANNEXE 1(A)** Summary of Claims Referred to the Tribunal in 2007 and the Outcome of the Claims Disposed of in 2007.
- ANNEXE 1(B)** Summary of Appeals against the Recommendations of Rights Commissioners Referred to the Tribunal in 2007 and the Outcome of the Appeals disposed of in 2007.
- ANNEXE 1(C)** Summary of claims for implementation Referred and Disposed of in 2007 where the Recommendations of the Rights Commissioners were not carried out.
- ANNEXE 1(D)** Summary Outcome of All Appeals against the Recommendations of the Rights Commissioners, and of claims for implementation where the recommendations of the Rights Commissioners were not carried out during 2007.
- ANNEXE 1(E)** Average waiting period between date of receipt and date of hearing of cases in 2005, 2006 and 2007 with comparative figures of Tribunal's workload in the same period.
- ANNEXE 2** Distribution of Compensation awarded by the Tribunal in Determinations of Unfair Dismissal in 2007.
- ANNEXE 3(A)** Number of Sittings of the Tribunal at the Various Venues in 2007.
- ANNEXE 3(B)** Particulars of Tribunal sittings in 2007.





**The Membership of the Employment Appeals Tribunal  
on 31st December 2007**

**Chairman:**

Kate T. O'Mahony, Barrister-at-Law

**Vice-Chairmen:**

Sinead Behan, Barrister-at-Law

Olive Brennan, Barrister-at-Law

Kieran Buckley, Solicitor

David Cagney, Barrister-at-Law

Pamela Clancy, Solicitor

Emile Daly, Barrister-at-Law

John Fahy, Barrister-at-Law

James Flanagan, Barrister-at-Law

William Benedict Garvey, Barrister-at-Law

Myles Gilvarry, Solicitor

Clodagh Gleeson, Barrister-at-Law

Bernadette Glynn, Solicitor

Tony Halpin, Barrister-at-Law \*

Dara Hayes, Barrister-at-Law

Patrick Hurley, Solicitor

Elva Kearney, Barrister-at-Law

Kevin P. Kilrane, Solicitor

Margaret Levey, Barrister-at-Law

Dermot MacCarthy, Senior Counsel

Desmond Mahon, Barrister-at-Law

Sean Mahon, Solicitor

Mary McAveety, Solicitor

Penelope McGrath, Barrister-at-Law

Eamonn Murray, Solicitor

Niamh O'Carroll Kelly, Barrister-at-Law

Leachlain S. Ó Catháin, Solicitor

Mark O'Connell, Barrister-at-Law

Jeremiah O'Connor, Solicitor

Rachel O'Flynn, Barrister-at-Law

Peter J. O'Leary, Barrister-at-Law

Seán O'Riordáin, Barrister-at-Law



Marian Petty, Solicitor  
Moya Quinlan, Solicitor  
Pat Quinn, Barrister-at-Law \*\*  
Tom Ryan, Solicitor  
Jeremiah Sheedy, Solicitor

Note: All appointments effective from 30<sup>th</sup> January 2007, unless indicated.

\* Resigned upon his appointment as a District Court Judge.

\*\* Appointed w.e.f. 13<sup>th</sup> June 2007

**Employers Panel:**

Joe Browne, Pat Casey, Frank Cunneen, Anne Delahunt\*,  
T. P. Flood, Michael Forde, Angela Gaule, Tom Gill,  
James Goulding, Eamonn Handley, Don Hegarty,  
James Hennessy, John Horan, Ben Kealy, Mel Kennedy,  
JJ Killian, Gerry McAuliffe, Cyril McHugh, Finbar Miloney,  
Don Moore, Desmond Morrison, Michael J. Murphy,  
Roger Murphy, Michael Noone, William O'Carroll,  
Aidan O'Mara\*\*, James O'Neill, C. A. Ormond,  
Tadg O'Sullivan, Gerry Phelan, Pat Pierce, Peter Pierson,  
William Power, Robert Prole, Jim Redmond, John Reid,  
Eamonn Ryan, Máire Sweeney, John Walsh, Declan Winston,  
Jean Winters.

Note: All appointments effective from 30<sup>th</sup> January 2007, unless indicated.

\* Resigned

\*\* Appointed w.e.f. 20<sup>th</sup> August 2007

**Employees Panel:**

Frank Barry, Eveta Brezina, Nick Broughall, Al Butler,  
Brendan Byrne, Catherine Byrne, Anne Clune, Jim Dorney,  
Patsey Doyle, Mary Finnerty, Kay Garvey, Noirin Greene,  
Helen Henry, George Hunter, Hilary Kelleher, Tony Kennelly,  
Rosabel Kerrigan, George Lamon, Joe LeCumbre, Sean Mackell,  
Joe Maher, Mary Maher, Peter McAleer, John McDonnell,  
Dominic McEvoy, Michael McGarry, Bernard McKenna,  
Alice Moore, Jim Moore, Maire Mulcahy, Owen Nulty,  
Phil Ni Sheaghda, Kevin O'Connor, Seamus O'Donnell,  
Emer O'Shea, Ciaran Ryan, Paddy Trehy, Catherine Warnock,  
Gerry Whyte, Patrick Woods.

Note: All appointments effective from 30<sup>th</sup> January 2007, unless indicated.

**ANNEXE 1 (A)**

**SUMMARY OF CLAIMS REFERRED TO THE TRIBUNAL IN 2007 AND THE OUTCOME OF THE CLAIMS DISPOSED OF IN 2007**

Act	Number of Claims referred* <sup>1</sup>	Allowed	Dismissed	Withdrawn during Hearing	Withdrawn prior to Hearing	Total Number of Claims Disposed of* <sup>2</sup>
Redundancy Payments	637	170	99	97	180	546
Minimum Notice and Terms of Employment	869	178	132	193	254	757
Unfair Dismissal (Direct Claims)	1052	140	170	315	286	911
Protection of Employees (Employers' Insolvency)	3	4	1	0	0	5
Organisation of Working Time	366	53	58	103	121	335
PT Workers	0	0	0	0	0	0
<b>TOTAL</b>	<b>2,927</b>	<b>545</b>	<b>460</b>	<b>708</b>	<b>841</b>	<b>2,554</b>

\*1. Some claims referred in 2007 not yet disposed of

\*2. Some claims disposed of in 2007 were referred in 2006

**Appeals against the Recommendations of Rights Commissioners are excluded - See Annexe 1 (B)**



## ANNEXE 1 (B)

### SUMMARY OF APPEALS AGAINST THE RECOMMENDATIONS OF RIGHTS COMMISSIONERS REFERRED TO THE TRIBUNAL IN 2007 AND THE OUTCOME OF THE APPEALS DISPOSED OF IN 2007

Legislation	Total Referred	Appeals By Employees						Cases disposed	Appeals by Employers				Cases Disposed	Total Disposed	
		No referred	Outcome of Appeals				No Referred		Outcome of Appeals						
			I **	Rec upheld	Rec upset	Rec Varied	Appeals Withdrawn			Rec upheld	Rec upset	Rec Varied	Appeals Withdrawn		
Unfair Dismissal Acts, 1977-2001	75	57	29	10	6	1	43	89	18	1	3	6	14	24	113
Payment of Wages Act, 1991	94	44	0	15	11	2	28	56	50	20	2	4	24	50	106
Terms of Employment (Information) Act, 1994 & 2001	64	45	10	3	4	1	10	28	19	3	1	1	5	10	38
Maternity Protection Act, 1994	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0
Parental Leave Act, 1998	1	0	0	0	0	0	2	2	1	0	0	0	1	1	3
EC (Transfer of Undertakings) Regulations 2003	11	3	0	0	0	0	0	0	8	0	0	0	0	0	0
EC (Protection of Employment) Regulations 2000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Competition Act 2002	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>246</b>	<b>150</b>	39	28	21	4	83	<b>175</b>	<b>96</b>	24	6	11	44	<b>85</b>	<b>260</b>

\*\* I - Claims referred for **Implementation**, which were disposed of by the EAT in 2007. See Annex 1C for details.

\* Some appeals referred in 2007 not yet disposed of

\* Some appeals disposed of in 2007 were referred in 2006



**ANNEXE 1(C)**

**SUMMARY OF CLAIMS FOR IMPLEMENTATION REFERRED AND DISPOSED OF IN 2007 WHERE THE  
RECOMMENDATIONS OF THE RIGHTS COMMISSIONERS WERE NOT CARRIED OUT**

Legislation	Total number of claims referred	Upheld	Upset	Appeals Withdrawn	Total Number of claims disposed of
Unfair Dismissals Act 1977 – 2001	22	22	0	7	29
Terms of Employment (Information) Act 1994 – 2001	10	10	0	8	18
<b>Total</b>	<b>32</b>	<b>32</b>	<b>0</b>	<b>15</b>	<b>47</b>



**ANNEXE 1(D)**

**SUMMARY OUTCOME OF ALL APPEALS AGAINST THE RECOMMENDATIONS OF THE RIGHTS COMMISSIONERS, AND OF CLAIMS FOR IMPLEMENTATION WHERE THE RECOMMENDATIONS OF THE RIGHTS COMMISSIONER WERE NOT CARRIED OUT DURING 2007**

Total number of appeals referred	Rec. Upheld	Rec. Upset	Rec. Varied	Appeals Withdrawn	Implementation	Total number of appeals disposed of
<b>246</b>	52	27	15	127	32	<b>253</b>



**ANNEX 1(E)**

**AVERAGE WAITING PERIOD BETWEEN DATE OF RECEIPT AND DATE OF HEARING OF CASES IN 2005, 2006 and 2007 WITH COMPARATIVE FIGURES OF TRIBUNAL'S WORKLOAD IN THE SAME PERIOD**

<b>Annual Average Waiting Period for Dublin</b>			
	<b>2005</b>	<b>2006</b>	<b>2007</b>
Weeks	28	27	20

<b>Annual Average Waiting Period for Provincial Areas</b>			
	<b>2005</b>	<b>2006</b>	<b>2007</b>
Weeks	41	44	51

**COMPARATIVE FIGURES FOR CLAIMS FOR UNFAIR DISMISSAL ONLY WHICH WERE REFERRED TO AND DISPOSED OF BY THE TRIBUNAL IN 2005, 2006 and 2007.**

<b>Unfair Dismissal claims</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
Cases Referred	1414	1291	1127
Cases Disposed	1090	1171	1024



**ANNEXE 2**  
**DISTRIBUTION OF COMPENSATION AWARDED BY THE TRIBUNAL**  
**IN DETERMINATIONS OF UNFAIR DISMISSAL IN 2007**

**Total Awarded:** €1,463,224.16  
**Total Number of Determinations of Unfair Dismissal** 201  
**Average** €7279.72

Compensation Award €	Number	Compensation Award €	Number
0	1	5001-6000	8
1 - 250	2	6001-7000	12
251 - 500	10	7001-8000	7
501 - 750	9	8001-9000	1
751 - 1000	19	9001-10000	9
1001 - 2000	29	10001-15000	15
2001 - 3000	18	15001-20000	9
3001 - 4000	18	20001-25000	5
4001 - 5000	15	>25001	14

Re-instatement was ordered in **1** case  
Re-engagement was ordered in **4** cases





**ANNEXE 3 (A)**

**NUMBER OF SITTINGS OF THE TRIBUNAL AT VARIOUS VENUES IN 2007**

LEINSTER		MUNSTER		CONNAUGHT		ULSTER	
VENUE	NO. OF SITTINGS AT EACH VENUE	VENUE	NO. OF SITTINGS AT EACH VENUE	VENUE	NO. OF SITTINGS AT EACH VENUE	VENUE	NO. OF SITTINGS AT EACH VENUE
Carlow	9	Cashel	7	Athlone	10	Cavan	13
Drogheda	5	Charleville	2	Carrick-on-Shannon	7	Donegal	5
Dublin	404	Clonakilty	3	Castlebar	20	Letterkenny	22
Dundalk	14	Clonmel	9	Galway	37	Monaghan	5
Kildare	1	Cork	133	Roscommon	1		
Kilkenny	10	Ennis	9	Sligo	8		
Longford	7	Killarney	9				
Mullingar	2	Limerick	47				
Naas	25	Mallow	1				
Navan	22	Nenagh	2				
Portlaoise	9	Roscrea	1				
Trim	1	Skibbereen	1				
Tullamore	4	Thurles	5				
Wexford	12	Tralee	11				
Wicklow	8	Waterford	23				
<b>TOTAL</b>	<b>533</b>		<b>263</b>		<b>83</b>		<b>45</b>



**ANNEXE 3 (B)**

**PARTICULARS OF TRIBUNAL SITTINGS IN 2007  
Between 1<sup>st</sup> January – 31<sup>st</sup> December 2007**

No. of Sitting days	No. of days 1 Division sat	No. of days 2 Divisions sat	No. of days 3 Divisions sat	No. of days 4 Divisions sat	No. of days 5 Divisions sat	No. of days 6 Divisions Sat	No. of days 7 Divisions sat	Number of Sitings		Total No. of Sitings	No. of Venues Tribunal sat.
								Dublin	Provinces		
224	5	36	177	208	265	168	65	404	520	924	40