

**AN BINSE ACHOMHAIRC
FOSTAÍOCHTA**

**THE EMPLOYMENT APPEALS
TRIBUNAL**

**THIRTY SEVENTH ANNUAL
REPORT**

2004

Submitted to the

Minister for Enterprise, Trade and Employment

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

CONTENTS	PAGE(S)
Chairman's Submission to the Minister for Enterprise, Trade and Employment	1
Introductory Note	3
Membership of Tribunal	5
Appeals and Claims Referred	7
Redundancy Payments Acts 1967 to 2003	8
Minimum Notice and Terms of Employment Acts 1973 to 2001	8
Unfair Dismissals Acts 1977 to 2001	8
Maternity Protection Act 1994	10
Protection of Employees (Employers' Insolvency) Acts 1984 to 2001	10
Payment of Wages Act 1991	10
Terms of Employment (Information) Act 1994 and 2001	11
Adoptive Leave Act 1995	11
Protection of Young Persons (Employment) Act 1996	12
Organisation of Working Time Act 1997	12
Parental Leave Act 1998	13
Protections for Persons Reporting Child Abuse Act 1998	13
European Communities (Protection of Employment) Regulations 2000	14
European Communities (Protection of Employees' Rights on Transfer of Undertakings) Regulations 2003	14
Carer's Leave Act 2001	15
Competition Act 2002	15
Average waiting period for Unfair Dismissal cases to be heard	16
Circuit Court Appeals	16

Number of Tribunal Sitings	16
Number of Postponements	17
Representation at Hearings	17
List of Appendices	19

**Chairman's Submission to Mr. Micheal Martin,
Minister for Enterprise, Trade and Employment**

Dear Minister

I am pleased to submit the Annual Report of the Employment Appeals Tribunal for the year 2004 to you, in accordance with Section 39 (18) of the Redundancy Payments Acts 1967 to 2003. This is my second Report to you as Minister for Enterprise, Trade and Employment and my fourth Report as Chairman of the Employment Appeals Tribunal.

The Tribunal is a quasi-judicial body whose sole function is to adjudicate on employment rights disputes. It has jurisdiction under fourteen Acts of the Oireachtas and two statutory instruments to deal with such disputes that arise during the course of employment or on the termination of the employment relationship. The Tribunal has original jurisdiction to hear claims at first instance under the Unfair Dismissals Acts, the Redundancy Payments Acts, and the Minimum Notice and Terms of Employment Acts, and a claim for holiday pay under the Organisation of Working Time Act can be added on to any of these claims. The Tribunal also has an appellate jurisdiction under twelve pieces of legislation to hear appeals: in eleven cases it hears appeals from the Recommendations and Decisions of Rights Commissioners and in one case (where the employer is insolvent) it hears appeals from the Decision of the Minister. Unusually, the Tribunal has both an original and an appellate jurisdiction under the Unfair Dismissals Acts, which provide a dismissed employee with the option to have his/her claim heard at first instance by either a Rights Commissioner or the Employment Appeals Tribunal. In general this results in the simpler unfair dismissal cases being dealt with by a Rights Commissioner and the more detailed and complex cases being dealt with by the Tribunal. Being a tripartite body, consisting of members drawn from both sides of the employment relationship and a legal chairman to interpret the law, the Tribunal is well qualified to deal with the complex issues that arise in the modern employment relationship, to interpret the relevant statutory provisions and to apply established case law to the issues before it. brings balance and fairness to the adjudicative process.

There was a significant reduction in the number of cases referred to the Tribunal, from 5,596 in 2003 to 3,754 in 2004, which is a decrease of 1,842 cases. This reduction is accounted for by the decrease of 1,741 claims for minimum notice in the period, which is due in part to the legislative change whereby claims for minimum notice in cases where the employer is insolvent can now be made directly to Department of Enterprise Trade and Employment for payment from the Social Insurance Fund obviating the necessity to obtain a decision Tribunal. However, this decline in the number of minimum notice cases referred to the Tribunal does not represent a significant change or saving for the Tribunal as the minimum notice claims are dealt with very quickly (a minute or less) and are either heard with other claims or slotted in to be heard before them.

The increase in the number of unfair dismissal cases referred to the Tribunal over the recent years has levelled off at 1,419; of these 125 were appeals from the recommendations of Rights Commissioners. It is notable that of the global figure of

3,754 cases referred to the Tribunal over the period 3,221 deal with termination of employment disputes. If the claims for holiday pay, arising at the same time, are included this number increases to 3,617 out of the 3,754 referrals, which means that 96.35% of the Tribunal's work is in adjudicating on the termination of employment disputes.

Adjudicating on unfair dismissal cases is the core work of the Tribunal. This work represents approximately 95% of its workload. The Tribunal disposed of an all-time high of 1,363 unfair dismissal cases in 2004, which was an increase of 10% from 1,235 in 2003. This is a very satisfactory result for the Tribunal in what is its most demanding and time-consuming work. This was achieved by increasing the number of days on which five and six divisions of the Tribunal sat.

The Tribunal is conscious of the need to provide an accessible, inexpensive, fair and informal forum for the speedy resolution of employment disputes within its jurisdiction. I believe that in general the Tribunal has successfully met this challenge over the period under review. However, the Tribunal remains concerned at the backlog of cases waiting to be heard. The backlog has been caused by the large increase in the number of unfair dismissal cases referred for hearing over recent years. This is primarily a resource issue and could be resolved by appointing additional secretaries, thus enabling additional divisions of the Tribunal to sit each day and clear the backlog. The Tribunal is also addressing this issue. Results have already been achieved in this endeavour by adopting a stricter approach in the granting of adjournments.

It has been an eventful year for the Tribunal. The Report of the Review Group on the Functions of the Employment Rights Bodies was completed in April 2004 and its recommendations are being considered. The Tribunal began its first-ever major internal review of its procedures and organisation in September. Its objective is to examine its procedures and make the Tribunal more accessible to its customers. In addition the results of a Quality Customer Service survey undertaken by the Tribunal in 2004 reflects a very high level of customer satisfaction with the services of the Tribunal among its client base. The Tribunal will continue to provide best practice in the field of customer services into the future.

Representatives of the Tribunal participated in a conference co-ordinated by the European Association of Labour Court Judges (of which the Tribunal is a member) on ***"The Protection of Employees at the Point of Termination of the Employment Relationship"***. A Final Report on this will be submitted to the European Commission. It was heartening to see that Ireland is to the fore in this European forum in providing solid protections for dismissed employees.

The term of appointment for the members to the Tribunal expired in January 2004 and new panels of members were appointed. I acknowledge the contribution made by former members to the work of the Tribunal and thank them for it. I would like to acknowledge the commitment and support given by Breda Cody (now retired) to the users of the Tribunal, its members and administrative staff during her time as Secretary to the Tribunal. I extend a warm welcome to Dominic Mc Bride who commenced as Secretary to the Tribunal in 2004. I look forward to working with him to ensure the Tribunal continues to provide a quality customer service for its users and that the rights of employees and employers continue to enjoy full and fair protection.

I express thanks to Minister Martin and Minister Killeen for their support, which is much appreciated. I look forward to your continuing support for the work of the Tribunal. I would also like to express my thanks to the Department for its continuing support and in particular for providing the Tribunal with the facility of a third hearing room at Davitt House.

To the members of the Tribunal I say your commitment and dedication to the work of the Tribunal is acknowledged and fully appreciated. This year I would like to add a special word of thanks for the extra support the members have given to ensure that the good work of the Tribunal continues. Your advices and wisdom on both review processes have been invaluable. In conclusion I would like to repeat my appreciation and gratitude to Dominic McBride and extend the same appreciation and gratitude to the Secretariat staff for their continued commitment to our work. I would like to acknowledge the unfailing courtesy they show in their dealings with the users of the Tribunal and its members.

Yours sincerely,

Kate T. O'Mahony
CHAIRMAN

**THIRTY SEVENTH ANNUAL REPORT OF
THE EMPLOYMENT APPEALS TRIBUNAL FOR YEAR ENDING
31ST DECEMBER, 2004**

INTRODUCTORY NOTE

The Tribunal, formerly known as the Redundancy Appeals Tribunal, was established under Section 39 of the Redundancy Payments Act, 1967. It 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 2003**, it also deals with disputes under:

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' Rights on Transfer of Undertakings) Regulations, 2003.
Carer's Leave Act, 2001;
Competition Act, 2002.

Under Section 18 of the Unfair Dismissals Act, 1977 the name of the Tribunal was changed to the Employment Appeals Tribunal.

The Tribunal is an independent body bound to act judicially and was set up to provide a speedy, fair, inexpensive and informal means for individuals to seek remedies for alleged infringements of their statutory rights.

The Tribunal consists of a Chairman and 31 Vice-Chairmen and a panel of 72 other members, thirty-six nominated by the Irish Congress of Trade Unions and thirty-six 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. Generally, five or six divisions sit on the same day, and seven divisions sat on occasion during 2004. 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.

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 Membership of the Employment Appeals Tribunal
on 31st December, 2004**

Chairman:

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

Vice-Chairmen:

Kieran Buckley, Solicitor

Dympna Cusack, Barrister-at-Law

Emile Daly, Barrister-at-Law

Catherine Egan, Barrister-at-Law

John Fahy, Barrister-at-Law

Fergal T. Fitzgerald-Doyle, Barrister-at-Law

James Flanagan, Barrister-at-Law

Myles Gilvarry, Solicitor

Clodagh Gleeson, Barrister-at-Law

Bernadette Glynn, Solicitor

Patrick G. Goold, Solicitor

Con Guiney, Barrister-at-Law

Tony Halpin, Barrister-at-Law

Dara Hayes, Barrister-at-Law

Elva Kearney, Barrister-at-Law

Kevin P. Kilrane, Solicitor

Margaret Levey, Barrister-at-Law

Dermot MacCarthy, Senior Counsel

Sean Mahon, Solicitor

Eoin Martin, Barrister-at-Law

Penelope McGrath, Barrister-at-Law

Leachlain S. Ó Catháin, Solicitor

Mark O'Connell, Barrister-at-Law

Thomas O'Donoghue, Solicitor

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

Marian Petty, Solicitor

Moya Quinlan, Solicitor

Joe Revington, Senior Counsel

Tom Ryan, Solicitor

Jeremiah Sheedy, Solicitor

Geraldine Small, Barrister-at-Law

Employers Panel:

Patrick Bracken, Joe Browne, William Brown,
Pat Casey, Frank Cunneen, Anne Delahunt,
T. P. Flood, Michael Forde, Tom Gill,
James Goulding, John Guinan, Richard Keating,
Ben Kealy, Mel Kennedy, Gerry McAuliffe,
Cyril McHugh, Don Moore, Desmond Morrison,
Michael J. Murphy, Roger Murphy, Terence
O'Donnell,

Paul O'Leary, James O'Neill, C. A. Ormond,
Gerry Phelan, Pat Pierce, Peter Pierson,
Jas. A. Power, William Power, Robert Prole,
Jim Redmond, John Reid, Eamonn Ryan,
Máire Sweeney, John Walsh, Declan Winston.

Employees Panel:

Frank Barry, Rita Bergin, Eveta Brezina,
Nick Broughall, Brendan Byrne, Paul Clarke,
Anne Clune, Jim Dorney, Breda Fell,
Kay Garvey, Noirin Greene, George Hunter,
Ben Kearney, Hilary Kelleher, Tony Kennelly,
George Lamon, Sean Mackell, Mary Maher
Des Mahon, Rita McArdle, John McDonnell,
Dominic McEvoy, Michael McGarry, Bernard
McKenna,

Alice Moore, Jim Moore, Sam Nolan,
Owen Nulty, Clare O'Connor, Kevin O'Connor,
Seamus O'Donnell, Emer O'Shea, Ciaran Ryan,
Catherine Warnock, Patrick Woods, Tom Wall.

Secretary:

Dominic McBride

Appeals and Claims referred to the Tribunal During 2004

Legislation	2003 No.	2004 No.
Minimum Notice and Terms of Employment Acts	2802	1061
Unfair Dismissals Acts (*includes 125 Appeals against Rights Commissioners' Recommendation)	1518	1419*
Redundancy Payments Acts	733	738
Protection of Employees (Employers' Insolvency) Acts	20	3
Maternity Protection Act	1	2
Payment of Wages Act (Appeals against Rights Commissioners' Decisions)	80	103
Terms of Employment (Information) Act (Appeals against Rights Commissioners' Recommendations)	24	20
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	414	396
Parental Leave Act (Appeals against Rights Commissioners' Decisions)	3	2
Protections for Person Reporting Child Abuse Act (Appeals against Rights Commissioners' Decisions)	-	-
European Communities (Protection of Employees' Rights on Transfer of Undertakings) Regulations, 2003 (Appeals against Rights Commissioners' Decisions)	1	9
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	-	-
TOTAL	5,596	3,754

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

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 **609** claims disposed of **199** were allowed, **69** were dismissed, **166** were withdrawn during hearing and **175** were withdrawn prior to hearing.

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 To 2001

During 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. This accounts for the significant decrease in the number of minimum notice claims referred to the Tribunal from 2802 in 2003 to 1061 in 2004.

Of the **1,213** claims disposed of under the Minimum Notice and Terms of Employment Acts **384** were allowed, **189** were dismissed, **380** were withdrawn during hearing and **260** were withdrawn prior to hearing.

UNFAIR DISMISSALS ACTS, 1977 To 2001

Section 8 of the 1977 Act as amended by Section 7 of the 1993 Act provides for the bringing of claims for redress for unfair dismissal before a Rights Commissioner or the Tribunal within six months of the date of dismissal. Under the amending Act of

1993 the onus for the giving of a copy of the notice of claim to the employer concerned now rests on the Tribunal. The same Act provides that the Rights Commissioner or the Tribunal may extend this time limit to twelve months in exceptional circumstances. A claim under this section may only be brought to the Tribunal if either party objects in writing to a Rights Commissioner hearing the claim.

The Act also provides for the bringing of an appeal against a Rights Commissioner's Recommendation to the Tribunal within six weeks of the date the Recommendation was communicated to the parties concerned. Here again the amending Act now places the onus on the Tribunal to give a copy of the notice of appeal to the other party.

Outcome of Claims and Appeals under the Unfair Dismissals Acts

Direct Claims

Of the total of **1,235** claims disposed of **176** were allowed, **178** were dismissed, **548** were withdrawn during hearing and **333** were withdrawn prior to hearing.

Appeals against Recommendations of Rights Commissioners

Of the **90** appeals against the Recommendations of Rights Commissioners disposed of by the Tribunal **21** were upheld, **9** were upset, **4** were varied and **56** were withdrawn.

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

Of the **38** claims disposed of by the Tribunal **14** were upheld, **3** were upset and **21** were withdrawn.

Forms of Redress

The Tribunal awarded compensation amounting to **€1,923,400.15** in **191** cases. The average compensation awarded by the Tribunal was **€10,070.16**. Re-instatement was ordered in **5** cases 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.

2 cases were appealed to the Tribunal in 2004. Two (**2**) cases were disposed of.

PROTECTION OF EMPLOYEES (EMPLOYERS' INSOLVENCY) ACTS,

1984 To 2001

Claims under these Acts 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. Also, where a doubt exists as to whether a claim is allowable or not, the Minister may refer the claim to the Tribunal for decision.

2 complaints were disposed of, and of these **1** was allowed and **1** was withdrawn prior to hearing.

As reported in the 2003 Annual Report, the Acts 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.

PAYMENT OF WAGES ACT, 1991

The main purpose of this Act is to define the acceptable modes of payment of wages and to regulate for certain deductions from wages. The Act allows for appeals to be made to the Tribunal against the decisions of Rights Commissioners.

Of the **70** appeals disposed of by the Tribunal **26** were upheld, **10** were upset, **8** were varied and **26** were withdrawn.

TERMS OF EMPLOYMENT (INFORMATION) ACT, 1994 AND 2001

The main purpose of this Act is to establish an employer's obligation to provide a written statement to employees setting out particulars of the employee's 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.

Outcome of Appeals

Of the **16** appeals disposed of by the Tribunal **5** were upheld, **2** were upset, **0** were varied and **9** were withdrawn.

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

Of the **4** claims disposed of by the Tribunal **3** were upheld and **1** was upset.

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, 2004.

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, 2004.

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 **334** claims disposed of by the Tribunal during the year ending 31st December, 2004. Of these **61** were allowed, **38** were dismissed, **155** were withdrawn during hearing and **80** 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 **2** appeals in 2004. **1** was upheld and **1** was upset.

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 31st December 2004.

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.

1 appeal was referred to the Tribunal during the year ending 31st December 2004. There were no appeals disposed of by the Tribunal during the year ending 31st December 2004.

EUROPEAN COMMUNITIES (PROTECTION OF EMPLOYEES' RIGHTS ON TRANSFER OF UNDERTAKINGS) REGULATIONS, 2003

These came into force on the 11th 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 2,000. 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.

9 appeals were referred to the Tribunal during the year ending 31st December 2004. There were no appeals disposed of during the year ending 31st December 2004.

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, Community 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 31st December 2004.

COMPETITION ACT 2002

The Competition Act, 2002 commenced on 1st July, 2002 and consolidated the existing competition and mergers legislation into one Statute.

Section 50(1) of the Act provides that an employee who reports a breach of the Act in good faith will not be held liable for the breach ("whistleblower" provision). Section 50(3) provides that an employer may not penalise an employee for such a report.

Where Section 50 (3) is contravened by an employer, redress is available to the employee concerned under Schedule 3 of the Act, which was based upon similar relevant provisions in the Protections for Persons Reporting Child Abuse Act, 1998 and the Terms of Employment (Information) Act, 1994. Schedule 3 provides that a complaint may be referred to a Rights Commissioner, and subsequently heard by an Employment Appeals Tribunal.

There were no appeals to the Tribunal during the year ending 31st December 2004.

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

The average waiting period for a case to come for hearing before the Tribunal was approximately **26** weeks in Dublin and **39** weeks in provincial areas.

CIRCUIT COURT APPEALS

Determinations by the Tribunal in cases under the Unfair Dismissals Acts may be appealed to the Circuit Court within six weeks of the date on which the determinations are communicated to the parties. The procedure for appealing Tribunal determinations is set out in regulations made under the Circuit Court Rules. The regulations also provide a means for the Tribunal to be informed of the referral and result of cases appealed to the Circuit Court.

The Tribunal was notified directly that **81** cases were referred to the Circuit Courts during 2004. From the information submitted by the Circuit Court offices in respect of **38** of these cases, **0** were upset, **5** were upheld, **4** were struck out, **2** were withdrawn, **6** were settled, **5** were adjourned and a decision is awaited in respect of **16** cases. Of the remaining **43** cases, no information is available.

NUMBER OF TRIBUNAL SITTINGS

During the year under review, Divisions of the Tribunal sat on **228** days at **56** different venues throughout the country. On **227** of these days, **2** or more Divisions of the Tribunal sat. The total number of sittings was **1,108** (**537** in Dublin and **571** in the Provinces). The number of sittings at each venue varied from a single sitting at a number of venues in the Provinces to **537** 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 2004 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.

Postponements may be granted only in exceptional circumstances. If a postponement is sought at once, and with the consent of the other party concerned, it may be granted. If a postponement is sought later and/or without the consent of the other party it is 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, and increases costs and the delay between the date of referral of a claim and the date of hearing for all claimants. There were **127** lost sittings days of divisions due to postponements in 2004.

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 of an employer's 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 2004 where the parties had representation was **1457**:

- **987** employee parties (**67.74%**) were represented (**238** by trade unions, **650** by legal representation and **99** by other persons).
- **818** employer parties (**56.14%**) were represented (**51** by employers' associations, **550** legal representation and **217** 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 **1028**:

- **701** employee parties (**68.19%**) were represented (**128** by trade unions, **530** by legal representation and **43** by other persons)
- **548** employer parties (**53.3%**) were represented (**37** by employers' associations, **399** by legal representation and **112** by other persons)

INFORMATION ON TRIBUNAL

An information booklet on the Tribunal as well as Guidelines for Practitioners appearing before the Tribunal are available free of charge from the *Information Unit, Department of Enterprise, Trade and Employment*. These are issued to all parties to unfair dismissal disputes prior to hearings.

A description of the service provided by the Tribunal and how to avail of it, as well as contact points, certain publications and frequently asked questions are available on the Department of Enterprise, Trade and Employment's website at www.entemp.ie. This Report is also available on the aforementioned website.

A Register of the Decisions and Determinations made by the Tribunal is kept at the office of the Secretariat.

The Secretariat's address is:

Department of Enterprise, Trade and Employment

Davitt House

65A Adelaide Road

Dublin 2.

The Register is open for inspection there by any member of the public during normal office hours.

Kate T. O' Mahony B.L

CHAIRMAN

APPENDICES

- ANNEXE 1(A)** Summary of Claims Referred to the Tribunal in 2004 and the Outcome of the Claims Disposed of in 2004.
- ANNEXE 1(B)** Summary of Appeals against the Recommendations of Rights Commissioners Referred to the Tribunal in 2004 and the Outcome of the Appeals disposed of in 2004.
- ANNEXE 1(C)** Summary of claims for implementation Referred and Disposed of in 2004 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 2004.
- ANNEXE 1(E)** Average waiting period between date of receipt and date of hearing of cases in 2002, 2003 and 2004 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 2004.

ANNEXE 3(A) Number of Sitzings of the Tribunal at the Various Venues in 2004.

ANNEXE 3(B) Particulars of Tribunal sittings in 2004.

ANNEXE 1 (A)

SUMMARY OF CLAIMS REFERRED TO THE TRIBUNAL IN 2004 AND THE OUTCOME OF THE CLAIMS DISPOSED OF IN 2004

Act	Number of Claims referred* ¹	Allowed	Dismissed	Withdrawn during Hearing	Withdrawn prior to Hearing	Total Number of Claims Disposed of* ²
Redundancy Payments	738	199	69	166	175	609
Minimum Notice and Terms of Employment	1061	384	189	380	260	1213
Unfair Dismissal (Direct Claims)	1294	176	178	548	333	1235
Protection of Employees (Employers' Insolvency)	3	1	0	0	1	2
Organisation of Working Time	396	61	38	155	80	334
TOTAL	3492	821	474	1249	849	3393

*1. Some claims referred in 2004 not yet disposed of

*2. Some claims disposed of in 2004 were referred in 2003

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 2004 AND THE OUTCOME OF THE APPEALS DISPOSED OF IN 2004**

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	125	92	38	14	6	2	30	90	33	7	3	2	26	38	128	
Payment of Wages Act, 1991	103	23		1	6	0	10	17	80	25	4	8	16	53	70	
Terms of Employment (Information) Act, 1994 & 2001	20	10	4	3	2	0	3	12	10	2	0	0	6	8	20	

Maternity Protection Act, 1994	2	1		0	0	1	0	1	1	0	0	0	1	1	2
Parental Leave Act, 1998	2	1		1	1	0	0	2	1	0	0	0	0	0	2
EC (Transfer of Undertakings) Regulations 2003	9	3		0	0	0	0	0	6	0	0	0	0	0	0
EC (Protection of Employment) Regulations 2000	1	1		0	0	0	0	0	0	0	0	0	0	0	0
Total	262	131	4 2	19	15	3	43	122	131	34	7	10	49	100	222

** I - Claims referred for **Implementation**, which were disposed of by the EAT in 2004 **See Annex 1C for details.**

* Some appeals referred in 2004 not yet disposed of

* Some appeals disposed of in 2004 were referred in 2003

ANNEXE 1(C)

SUMMARY OF CLAIMS FOR IMPLEMENTATION REFERRED AND DISPOSED OF IN 2004 WHERE THE RECOMMENDATIONS OF THE RIGHTS COMMISSIONERS WERE NOT CARRIED OUT

Legislation	Total number of claims referred	Upheld	Appeals Withdrawn	Total Number of claims disposed of
Unfair Dismissals Act 1977 – 2001	38	17	21	38
Terms of Employment (Information) Act 1994 – 2001	5	4	0	4
Total	43	21	21	42

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 2004

Total number of appeals referred	Rec. Upheld	Rec. Upset	Rec. Varied	Appeals Withdrawn	Implementation	Total number of appeals disposed of
262	53	22	13	92	42	222

ANNEX 1(E)

AVERAGE WAITING PERIOD BETWEEN DATE OF RECEIPT AND DATE OF HEARING OF CASES IN 2002, 2003 AND 2004 WITH COMPARATIVE FIGURES OF TRIBUNAL'S WORKLOAD IN THE SAME PERIOD

Average Waiting Period for Dublin			
	2002	2003	2004
WEEKS	23	29	26

Average Waiting Period for Provincial Areas			
	2002	2003	2004
WEEKS	19	28	39

**COMPARATIVE FIGURES FOR CLAIMS FOR UNFAIR DISMISSAL ONLY WHICH WERE
REFERRED TO AND DISPOSED OF BY THE TRIBUNAL IN 2002, 2003 AND 2004**

Unfair Dismissal claims	2002	2003	2004
CASES REFERRED	1311	1518	1419
Cases Disposed	970	1235	1363

ANNEXE 2

DISTRIBUTION OF COMPENSATION AWARDED BY THE TRIBUNAL

IN DETERMINATIONS OF UNFAIR DISMISSAL IN 2004

TOTAL AWARDED = €1,923,400.15

Total number of Determination of Unfair Dismissal = 191
Average = € 10,070.16

Compensation Award €	Number	Compensation Award €	Number
0	9	5001-6000	5
1 - 250	0	6001-7000	11
251 - 500	7	7001-8000	9
501 - 750	11	8001-9000	8
751 - 1000	13	9001-10000	5
1001 - 2000	19	10001-15000	10
2001 - 3000	21	15001-20000	11
3001 - 4000	10	20001-25000	6
4001 - 5000	16	>25001	14

--	--	--	--

Re-instatement was ordered in 5 cases

Re-engagement was ordered in 4 cases

ANNEXE 3 (A)

NUMBER OF SITTINGS OF THE TRIBUNAL AT VARIOUS VENUES IN 2004

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
Birr	2	Bantry	1	Athlone	4	Buncrana	1
Carlow	8	Cahir	1	Ballina	11	Carrickmacross	1
Drogheda	19	Cashel	2	Ballinasloe	3	Cavan	19
Dublin	537	Castletownbeare	1	Ballinrobe	1	Letterkenny	34
Dundalk	3	Charleville	1	Boyle	2	Monaghan	6
Gorey	3	Clonakilty	3	Carrick-on-Shannon	2		
Kilbeggan	2	Clonmel	16	Castlebar	18		
Kilkenny	9	Cork	109	Galway	38		
Longford	6	Daingean	2	Roscommon	1		
Maynooth	1	Dungarvan	1	Sligo	9		
Mullingar	4	Ennis	21				
Naas	23	Killarney	12				
Navan	14	Limerick	60				
Portlaoise	5	Mallow	3				
Trim	1	Nenagh	4				
Tullamore	12	Roscrea	1				
Wexford	24	Skibbereen	1				
Wicklow	5	Templemore	1				
		Thurles	5				
		Tipperary	2				
		Tralee	15				
		Waterford	16				

		Youghal	2		
TOTAL	678		280	89	61

ANNEXE 3 (B)

PARTICULARS OF TRIBUNAL SITTINGS IN 2004

Qtr. Ended	No. of Sittings days	No. of days 1 Division sat	No. of days 2 Division s sat	No. of days 3 Division s sat	No. of days 4 Division s sat	No. of days 5 Division s sat	No. of days 6 Division s Sat	No. of days 7 Division s sat	Number of Sittings		Total No. of Sittings	No. of days Tribunal sat at 2 venues same day
									Dublin	Provinces		
31/03/04	62	1	5	8	7	12	25	4	156	145	301	-
30/06/04	60	0	1	6	11	24	14	4	138	158	296	-
30/09/04	51	0	0	5	16	19	9	2	121	121	242	-
31/12/04	55	0	1	4	14	17	19	0	122	147	269	-
TOTALS	228	1	7	23	48	72	67	10	537	571	1108	-