



AN BINSE ACHOMHAIRC FOSTAÍOCHTA

**THE EMPLOYMENT APPEALS
TRIBUNAL**

FORTY-SECOND

ANNUAL REPORT

2009



AN BINSE ACHOMHAIRC FOSTAÍOCHTA

THE EMPLOYMENT APPEALS TRIBUNAL

FORTY-SECOND ANNUAL REPORT

2009

Submitted to the

Minister for Enterprise, Trade and Innovation

in pursuance of

Section 39(18) of the Redundancy Payments Act 1967



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Chairman's Submission to Mr. Batt O'Keeffe

Minister for Enterprise, Trade and Innovation

Dear Minister

I am pleased to submit the Annual Report of the Employment Appeals Tribunal for the year 2009 to you, in accordance with Section 39 (18) of the Redundancy Payments Acts 1967 to 2007. This is my first report to you as Minister for Enterprise, Trade and Innovation my ninth Report as Chairman of the Employment Appeals Tribunal.

The Tribunal is a quasi-judicial body. Its sole function is to adjudicate on disputes on individual employment rights. It has jurisdiction under fifteen Acts of the Oireachtas and two statutory instruments to deal with individual employment rights disputes that arise either during the course of employment or on the termination of the employment relationship.

Claims arising from the termination of the employment relationship are made directly to the Tribunal. These include claims for unfair dismissal, redundancy and minimum notice. Complaints against the Decision of the Minister on employees' rights when an employer had been declared insolvent are also made directly to the Tribunal. Finally, claims in respect of holiday entitlements existing at the time of the termination of the employment relationship may be included with any other claim, appeal or complaint instituted before the Tribunal.

The Tribunal is also an appellate body, adjudicating on appeals from the recommendations or Decisions of Rights Commissioners under fifteen pieces of employment rights legislation.

Unusually, claims for unfair dismissal can be made in the first instance either to the Tribunal or to a Rights Commissioner and in the latter case an appeal lies from the recommendation of a Rights Commissioner to the Tribunal.

In 2009 the Tribunal had its highest increase ever in the number of cases referred to it. The referrals to the Tribunal rose to 9,458 in 2009 from 5,457 in 2008, an increase of 4,001 cases or of 73%, which was a trebling of its workload over the last two years. The number of redundancy referrals more than doubled, rising by 114% to 3,008 in 2009 from 1,407 in 2008 and from 637 in 2007, which was approximately a five-fold increase over two years. The number of cases referred under the Unfair Dismissals Acts rose to 2,489 in 2009, which is an increase of 62% on the number referred in 2008. Adjudicating unfair dismissal cases accounts for around 93% of the Tribunal's workload in terms of the time spent on hearings and which also includes the background work involved in the preparation of the Tribunal's Determination for issue to the parties. The number of appeals from the Recommendations and Decisions of Rights Commissioners rose to 629 in 2009 from 447 in 2008, which is an increase of 41%. The number of claims for implementation of the Recommendations and Decisions of Rights Commissioners rose to 179 in 2009 from 109 in 2008, which is an increase of 70%.

I am happy to report that the number of cases disposed of in 2009 rose to 4,680, which was an increase of 673 over 2008. In 2009 the Department allocated additional staffing



resources to the Secretariat and this had a direct impact in allowing the Tribunal to increase the number of cases heard each day.

The Department's support is much appreciated and I look forward to its continuing support to deal with the Tribunal's increasing workload. I thank the members of the Tribunal whose willingness to deal with extra cases at a sitting has enabled the Tribunal to increase its throughput of cases.

The Tribunal's policy is to provide an accessible, inexpensive, fair and informal forum for the resolution of employment rights disputes. While the annual average waiting period for the year rose from 16 weeks to 31 weeks in Dublin, it only rose from 31 weeks to 32 weeks outside Dublin. However, despite this average, the increase in the waiting periods in the last quarter of 2009 was more significant. This was due to decreasing the number of new cases listed over the last few months of the year as the current term of the Tribunal was coming to an end. This decrease was a necessary measure to ensure hearings were completed before the expiry of the term.

The Tribunal is a member of the European Association of Labour Court Judges. This body provides the forum for building upon the working relationship that already exists between employment rights bodies of Europe. It also develops a greater understanding of the statutory employment rights conferred on workers in Europe and the various systems for the vindication of those rights. Representatives of the Tribunal participated in a conference co-ordinated by the Association on "The Impact of Mobility of Workers and Enterprises on Employment Rights" in June 2009 in Liverpool.

I thank both Minister Kelleher and Minister Calleary for their support to the Tribunal in 2009. The Tribunal extends a warm welcome and congratulations to you Minister Batt O'Keeffe in your appointment as Minister for Enterprise, Trade and Innovation. The Tribunal looks forward to your support over the coming year to help it deal with its increased workload.

A very special thanks to the members of the Tribunal for their good work during the course of the term just ended. Your commitment and dedication to the work of the Tribunal is much appreciated. Your assistance and advices were a valuable resource to me over your time with the Tribunal.

A special word of thanks to Dominic Mc Bride, Secretary to the Tribunal, whose contribution and support to the Tribunal is inestimable. His work is greatly appreciated. I thank the staff of the Secretariat for their continuing support and commitment to the work of the Tribunal and for their unfailing courtesy to the users of the Tribunal and its members.

Yours sincerely

Kate T O'Mahony
Chairman



**FORTY-SECOND ANNUAL REPORT OF
THE EMPLOYMENT APPEALS TRIBUNAL FOR YEAR ENDING
31ST DECEMBER 2009**

Section 1

Corporate Statement and Activities for 2009



Section 1: *Corporate Statement and Activities for 2009*

Introduction

The Redundancy Payments Act of 1967, which established the Redundancy Appeals Tribunal, was enacted on 18th 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 cases under seventeen 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 22nd 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 18th April 1968. Between that date and 31st 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-two 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, in 2009 there were one hundred and seventeen (117) Members of the Tribunal (See Section 2).

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 Innovation) 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 2005;
Unfair Dismissals Acts 1977 to 2007;
Maternity Protection Acts 1994 and 2004;
Protection of Employees (Employers' Insolvency) Acts 1984 to 2004;
Payment of Wages Act 1991;
Terms of Employment (Information) Acts 1994 and 2001;
Adoptive Leave Acts 1995 and 2005;
Protection of Young Persons (Employment) Act 1996;
Organisation of Working Time Act 1997;
Parental Leave Acts 1998 and 2006;
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
Chemicals Act 2008.

➤ **2009 Composition of the Tribunal**

In 2009 the Tribunal consisted of a Chairman, thirty-six 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 Innovation 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 Section 2.

➤ **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 Innovation 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. The Secretariat notify the parties concerned of the Determinations of the Tribunal.

The Secretary to the Tribunal is Mr. Dominic McBride.

Tribunal's activities during 2009

➤ **2009 Statistics: An Overview**

There were 1,437 sittings of the Tribunal, held at 40 separate locations, during 2009. Of these, 482 sittings took place in Dublin, and 955 sittings were held in provincial areas.

The total number of claims referred to the Tribunal either directly or on appeal from recommendations and Decisions of the Rights' Commissioner Service, in 2009 was 9,458. The Tribunal disposed of 4,680 claims during the year.

The annual average waiting period to have a claim heard was thirty-one weeks in Dublin, and was thirty-two weeks in provincial areas at year's end.



Details relating to the work of the Tribunal in 2009, and the statistical data upon which this Report is based are outlined in **Section 3: Claims Referred and Disposed of by the Tribunal in 2009** and in **Section 4: Statistics**.

Services undertaken by the Tribunal during 2009

➤ 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.

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. 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. Determinations are also available on the Tribunal website in line with the provisions of the Data Protection Acts.

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@deti.ie. An online comment card is also available on the Tribunal's website.

The Tribunal is committed to maintaining a high level of customer service.



➤ **Information Technology: EAT Website and EAT online services in 2009.**

There were 3.1m hits on the website in 2009, which brings the total number of hits from its launch date on 3rd April 2006 to approx 7.3m hits.

The Tribunal continues to develop its website facilities in line with eGovernment Strategies.

➤ **Freedom of Information Act 1997**

The Freedom of Information Act 1997 (as amended), when applied to the Tribunal, will cover only the administrative functions of the Tribunal. All information of a personal nature will continue to be protected personal information as defined by the Data Protection Acts 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 2009. The conference took place in Liverpool on 26th and 27th June 2009.

➤ **“Information Visits to EAT”**

Tribunal hearings are held in public. Members of the public are welcome to attend any hearing. In addition, 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.

The Tribunal welcomes first and repeat visits from students from various educational establishments, visits from voluntary sector groups, in particular groups from the Citizens' Information Centres, and from community law groups.



**FORTY-SECOND ANNUAL REPORT OF
THE EMPLOYMENT APPEALS TRIBUNAL FOR YEAR ENDING
31ST DECEMBER 2009**

Section 2

Membership of the Tribunal



Section 2

Membership of the Tribunal 2009

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

Dara Hayes, Barrister-at-Law

Patrick Hurley, Solicitor

Elva Kearney, Barrister-at-Law

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

Saundra McNally, Solicitor

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

Sean O'Riordáin, Barrister-at-Law

Marian Petty, Solicitor

Moya Quinlan, Solicitor

Pat Quinn, Barrister-at-Law

Tom Ryan, Solicitor

Jeremiah Sheedy, Solicitor

Tony Taaffe, Solicitor



<u>Employers Panel:</u>	Joe Browne	Pat Casey	Frank Cunneen	T.P. Flood
	Michael Forde	Angela Gaule	Tom Gill	James Goulding
	Eamon C Handley	Don Hegarty	James Hennessy	John Horan
	Ben Kealy	Mel Kennedy	J J Killian	Gerry McAuliffe
	Cyril McHugh	Finbar Moloney	Don Moore	Desmond Morrison
	Michael J Murphy	Roger F Murphy	Michael Noone	William O'Carroll
	Aidan O'Mara	James O'Neill	Neil Ormond	Tadg O'Sullivan
	Gerry Phelan	Pat Pierce	Peter J Pierson	William Power
	Robert D.E. Prole	Jim Redmond	John Reid	Eamonn Ryan
	Máire Sweeney	Liam Tobin	Declan F Winston	Jean Winters

Employees

Panel:

Frank Barry	Eveta Brezina	Nick Broughall	Al Butler
Brendan Byrne	Catherine Byrne	Paul Clarke	Anne Clune
James Dorney	Patsy 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	Ciaran Ryan
Patrick Trehy	Catherine	Gerry Whyte	Paddy Woods
	Warnock		

Secretary:

Dominic McBride



**FORTY-SECOND ANNUAL REPORT OF
THE EMPLOYMENT APPEALS TRIBUNAL FOR YEAR ENDING
31ST DECEMBER 2009**

Section 3

Cases Referred and Disposed of by the Tribunal in 2009

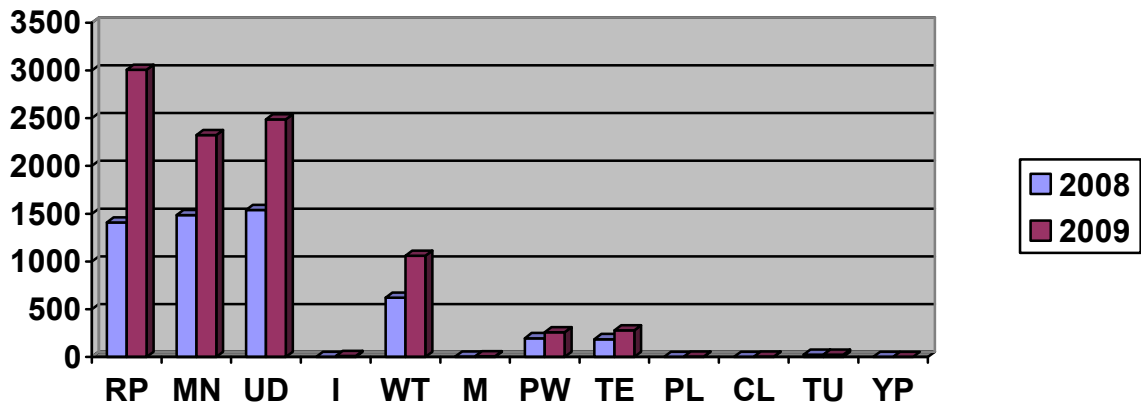


Cases referred to the Tribunal 2008 and 2009

Legislation	2008	2009
	No.	No.
Redundancy Payments Acts 1967-2007	1407	3,008
Minimum Notice and Terms of Employment Acts 1973-2005	1485	2,324
Unfair Dismissals Acts 1977-2007 (*This figure includes 178 Appeals against Rights Commissioners' Recommendation and 63 Implementation Claims)	1538	2,489*
Protection of Employees (Employers' Insolvency) Acts 1984-2004	-	11
Organisation of Working Time Act 1997	619	1,059
Maternity Protection Acts 1994 and 2004 (Appeals against Rights Commissioners' Decisions)	2	6
Payment of Wages Act 1991 (Appeals against Rights Commissioners' Decisions)	196	257
Terms of Employment (Information) Acts 1994 and 2001 (**This figure includes 164 Appeals against Rights Commissioners' recommendations & 113 Implementation Claims)	186	277**
Parental Leave Acts 1998 and 2006 (Appeals against Rights Commissioners' Decisions)	-	3
Carer's Leave Act 2001 (Appeals against Rights Commissioners' Decisions)	-	2
European Communities (Protection of Employees on Transfer of Undertakings) Regulations, 2003 (***This figure includes 19 Appeals against Rights Commissioners' Decisions and 3 Implementation Claims)	23	22***
Protection of Young Persons (Employment) Act 1996 (Appeals against Rights Commissioner's Recommendations)	1	-
TOTAL	5,457	9,458

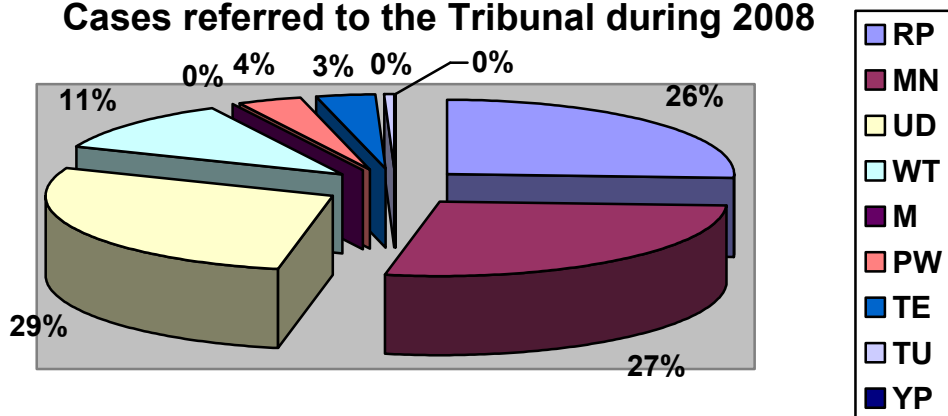


Cases referred to the Tribunal 2008 and 2009

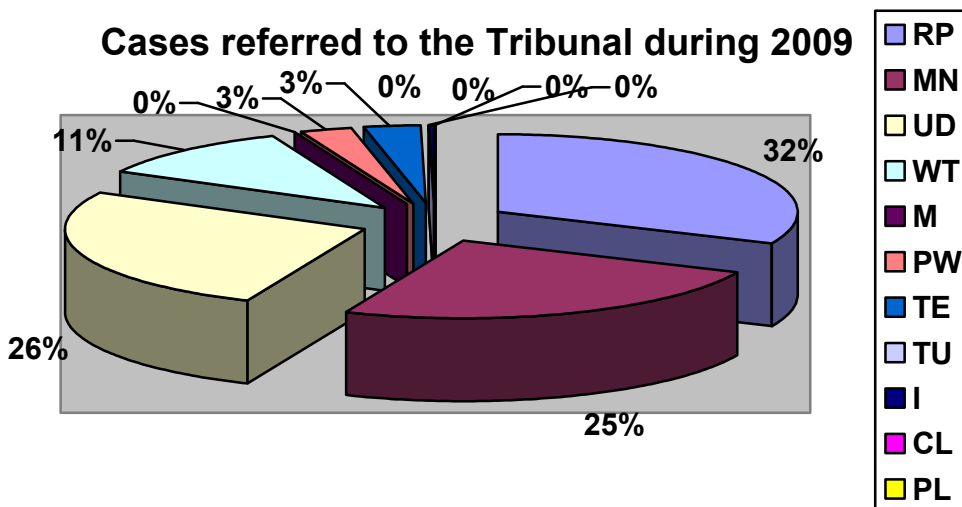


RP= Redundancy, MN=Minimum Notice, UD=Unfair Dismissal, I= Insolvency, WT= Working Time, M=Maternity, PW = Payment of Wages, TE=Terms of Employment, PL=Parental Leave, CL=Carers Leave, TU=Transfer of Undertakings, YP=Young persons.

Cases referred to the Tribunal during 2008



Cases referred to the Tribunal during 2009





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 week. 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 as to 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.

3,008 appeals were referred to the Tribunal in 2009.

Of the **1,420** claims disposed of **618** were allowed, **203** were dismissed, **101** were withdrawn during hearing and **498** were withdrawn prior to hearing.

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS 1973 to 2005

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 (now Department of Enterprise, Trade and Innovation), 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 4th July 2006.

2,324 appeals and claims were referred to the Tribunal in 2009.

Of the **1,274** claims disposed of under the Minimum Notice and Terms of Employment Acts, **423** were allowed, **279** were dismissed, **188** were withdrawn during hearing and **384** were withdrawn prior to hearing.

UNFAIR DISMISSALS ACTS 1977 to 2007

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.

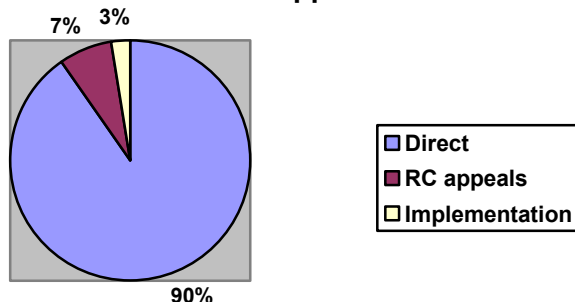
The Unfair Dismissals Acts now apply to most state employees including most civil servants. The exclusion from the Acts for most state employees was removed by the Civil Service Regulation (Amendment) Act 2005 and the relevant sections became operational on 4th July 2006.

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

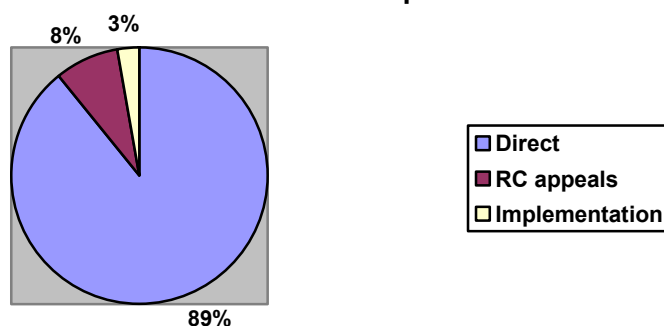
2,489 cases came before the Tribunal during 2009. This figures includes **2,248** direct claims, **178** appeals received from the Rights Commissioners and **63** claims for implementation where the Recommendations of the Rights Commissioners were not carried out.

2009 Unfair Dismissal Appeals



1,182 claims were disposed in 2009. This figures includes **1,055** direct claims, **94** from appeals to Rights Commissioners and **33** claims for implementation.

2009 Unfair Dismissal Claims Disposed



The breakdown of claims disposed of is as follows;



Of the total of **1,055** claims disposed of, **200** were allowed, **254** were dismissed, **231** were withdrawn during hearing and **370** were withdrawn prior to hearing.

Of the **94** appeals disposed of, **30** were upheld, **20** were upset, **10** were varied and **34** were withdrawn, either during or prior to hearing.

Of the **33** claims for implementation disposed of, **19** claims were upheld.

Forms of Redress

The Tribunal awarded compensation amounting to **€3,039,792** in **217** cases. The average compensation awarded by the Tribunal was **€14,008**. Re-instatement was ordered in **5** cases and re-engagement was ordered in **6** cases. The distribution of compensation awarded by the Tribunal is shown in Annexe 2.

MATERNITY PROTECTION ACTS 1994 and 2004

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.

6 appeals were referred in 2009 and the sole appeal disposed of was upheld by the Tribunal.

PROTECTION OF EMPLOYEES (EMPLOYERS' INSOLVENCY) ACTS

1984 to 2004

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 Innovation 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. No. 630 of 2005 has extended the Insolvency Payments Scheme to include all awards made by the Tribunal¹. This statutory instrument also extends cover to employees who are employed in

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



Ireland by an employer who has become insolvent under the laws, regulations and administrative procedures of another member state.

11 appeals were referred to the Tribunal in 2009.

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 Commissioner on complaints in relation to an unlawful deduction from wages.

257 appeals were referred to the Tribunal in 2009. Of the **169** appeals disposed of by the Tribunal, **65** were upheld, **9** were upset, **7** were varied and **88** were withdrawn.

TERMS OF EMPLOYMENT (INFORMATION) ACTS 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.

277 appeals and claims were referred to the Tribunal in 2009.

Of the **109** cases disposed of by the Tribunal, **42** were upheld, **3** were upset, **8** were varied and **56** were withdrawn.

Of the **46** claims for implementation **33** were upheld, **2** upset and **11** were withdrawn.

ADOPTIVE LEAVE ACTS 1995 and 2005

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 2009.



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 2009.

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 39 allows an employee, where an employer is inadvertently incorrectly identified before the Tribunal, to apply for leave to institute proceedings against the proposed employer notwithstanding that the time line for instituting such claims might have expired. Section 40 allows an employee or his/her trade union to include a holiday complaint along with any proceedings being taken to the Tribunal in respect of any legislation coming within its jurisdiction.

1,059 appeals and claims were referred to the Tribunal in 2009. Of the **479** cases disposed of by the Tribunal, **103** were allowed, **100** were dismissed, **121** were withdrawn during and **155** withdrawn prior.

PARENTAL LEAVE ACTS 1998 and 2006

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.



There were **3** appeals to the Tribunal during the year ending 31st December 2009.

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 2009.

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 to the Tribunal after the six-week period.

There were no appeals to the Tribunal during the year ending 31st December 2009.

EUROPEAN COMMUNITIES (PROTECTION OF EMPLOYEES 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 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 or a Determination of the Tribunal has not been carried out a claim for implementation may be made after a six-week period to the Circuit Court.

22 appeals and claims were referred to the Tribunal during the year ending 31st December 2009 and **3** implementations.

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 **2** appeals to the Tribunal during the year ending 31st December 2009.

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 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 31st December 2009.



CHEMICALS ACT 2008

Section 26 of this Act provides protection of employees from penalisation for reporting breaches of the Act.

There were no appeals to the Tribunal during the year ending 31st December 2009.

AVERAGE WAITING PERIOD FOR CASES TO BE HEARD

The annual average waiting period for a case to come for hearing before the Tribunal was approximately **31** weeks in Dublin and **32** weeks in provincial areas.

APPEALS TO THE HIGH COURT

Determinations of the Tribunal, under certain Acts, may be appealed on a point of law to the High Court and may also come before the High Court by way of Judicial Review.

In 2009 **10** such cases were lodged with the High Court.

APPEALS TO CIRCUIT COURT

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 Circuit Court Rules (www.courts.ie). The regulations also provide a means for the Tribunal to be informed of the referral and result of cases appeals to the Circuit Court.

Approximately **81** cases were appealed to the Circuit Court. From the limited information received from Circuit Court Offices **5** were adjourned, **14** were pending, **7** struck out, **2** upheld and **1** withdrawn. No information was available in respect of the remaining **52** cases.

NUMBER OF TRIBUNAL SITTINGS

During the year under review, Divisions of the Tribunal sat on **228** days at **40** different venues throughout the country. On **108** of these days, **7** or more Divisions of the Tribunal sat **which resulted in a total of 756 sittings**. The total number of sittings was **1,437** (**482** in Dublin and **955** in the Provinces). The number of sittings at each venue varied from a single sitting at a number of venues in the Provinces to **482** 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 2009 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 2009, the total number of postponement applications was **448** of which **306** were granted and **142** were refused. There were **89** lost sittings days of Divisions due to postponements in 2009.

APPLICATIONS FOR INTERPRETERS

The Tribunal provides a language interpreter service. Applications for an interpreter must be made before a sitting Division of the Tribunal.

The Tribunal granted **184** applications to have Interpreters at the hearing during 2009.

ACCESSIBILITY

The Tribunal, on request, will take all practicable steps to provide special facilities for a person attending a hearing with disabilities and other special needs.

REPRESENTATION AT HEARINGS

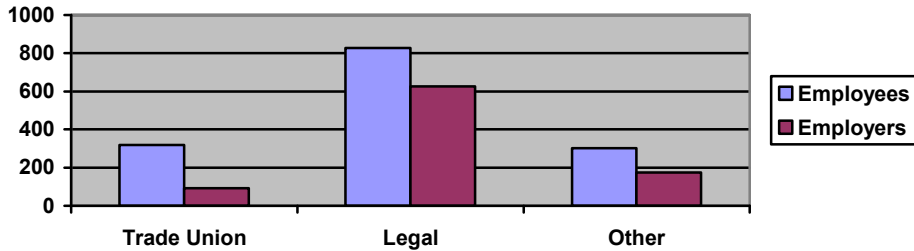
A party to an application may appear and be heard in person or be represented by counsel or solicitor or by a representative of a trade union or by an employers' association or, with the leave of the Tribunal, by any other person. Any party to a case may have one or more representative(s) acting on its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

Details of the representation under the various Acts or combination of Acts in 2009 are as follows:



- **1,447** employees had representation (**318** by trade unions, **828** by legal representatives and **301** other persons).
- **892** employers had representation (**92** by employers' associations, **626** by legal representatives and **174** other persons).

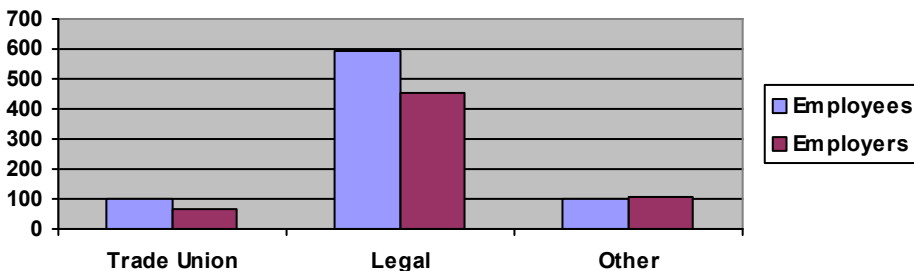
Representation under Various Acts in 2009



Representation for Unfair Dismissals cases are as follows:

- **794** employee parties had representation (by **100** trade unions, **593** by legal representatives and **101** by other persons).
- **629** employer parties had representation (**70** by employers' associations, **455** by legal representatives and **104** by other persons).

Representation under Unfair Dismissal Acts in 2009



Kate T. O'Mahony

Chairman



**FORTY-SECOND ANNUAL REPORT OF
THE EMPLOYMENT APPEALS TRIBUNAL FOR YEAR ENDING
31ST DECEMBER 2009**

**Section 4
*Statistics***



APPENDICES

- ANNEXE 1(A)** Summary of Claims Referred to the Tribunal in 2009 and the Outcome of the Claims Disposed of in 2009.
- ANNEXE 1(B)** Summary of Appeals against the Recommendations of Rights Commissioners Referred to the Tribunal in 2009 and the Outcome of the Appeals disposed of in 2009.
- ANNEXE 1(C)** Summary of claims for implementation Referred and Disposed of in 2009 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 2009.
- ANNEXE 1(E)** Average waiting period between date of receipt and date of hearing of cases in 2007, 2008 and 2009 with comparative figures for Unfair Dismissal and Redundancy in the same period.
- ANNEXE 2** Distribution of Compensation awarded by the Tribunal in Determinations of Unfair Dismissal in 2009.
- ANNEXE 3(A)** Number of Sittings of the Tribunal at Various Venues in 2009.
- ANNEXE 3(B)** Particulars of Tribunal Sittings in 2009.



ANNEXE 1 (A)

SUMMARY OF CLAIMS REFERRED TO THE TRIBUNAL IN 2009 AND THE OUTCOME OF THE CLAIMS DISPOSED OF IN 2009

Act	Number of Claims referred* ¹	Allowed	Dismissed	Withdrawn during Hearing	Withdrawn prior to Hearing	Total Number of Claims Disposed of* ²
Redundancy Payments	3,008	618	203	101	498	1,420
Minimum Notice and Terms of Employment	2,324	423	279	188	384	1,274
Unfair Dismissal (Direct Claims)	2,248	200	254	231	370	1,055
Protection of Employees (Employers' Insolvency)	11	0	0	0	0	0
Organisation of Working Time	1,059	103	100	121	155	479
TOTAL	8,650	1,344	836	641	1,407	4,228

*1. Some claims referred in 2009 not yet disposed of

*2. Some claims disposed of in 2009 were referred in 2008

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 2009 AND THE OUTCOME OF THE APPEALS DISPOSED OF IN 2009

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					
			Rec upheld	Rec upset	Rec Varied	Appeals Withdrawn			Rec upheld	Rec upset	Rec Varied	Appeals Withdrawn		
Unfair Dismissal Acts 1977-2007	178	113	27	9	5	16	57	65	3	11	5	18	37	94
Maternity Protection Acts 1994 and 2004	6	3	1	0	0	0	1	3	0	0	0	0	0	1
Payment of Wages Acts 1991	257	105	45	2	1	38	86	152	20	7	6	50	83	169
Terms of Employment (Information) Acts 1994 & 2001	164	64	7	3	1	10	21	100	35	0	7	46	88	109
Parental Leave Acts 1998 and 2006	3	2	0	0	0	0	0	1	0	0	0	0	0	0
Carers Leave 2001	2	2	0	0	0	0	0	0	0	0	0	0	0	0
European Communities (Protection of Employees on Transfer of Undertaking) Regulations 2003	19	2	0	0	0	0	0	17	0	0	0	0	0	0
Total	629	291	80	14	7	64	165	338	58	18	18	114	208	373

* Some appeals referred in 2009 not yet disposed of

* Some appeals disposed of in 2009 were referred in 2008



ANNEXE 1(C)

**SUMMARY OF CLAIMS FOR IMPLEMENTATION REFERRED AND DISPOSED OF IN 2009 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 Acts 1977 – 2001	63	19	0	14	33
Terms of Employment (Information) Acts 1994 – 2001	113	33	2	11	46
European Communities (Protection of Employees on Transfer of Undertaking) Regulations 2003	3	0	0	0	0
Total	179	52	2	25	79



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 2009

Total number of appeals & claims for implementation referred	Rec. Upheld	Rec. Upset	Rec. Varied	Appeals Withdrawn*	Total number of appeals disposed of
808	190	34	25	203	452

*Appeals are withdrawn prior to, during or in rare cases at the end of a hearing



ANNEX 1(E)

AVERAGE WAITING PERIOD BETWEEN DATE OF RECEIPT AND DATE OF HEARING OF CASES IN 2007, 2008 and 2009 WITH COMPARATIVE FIGURES FOR UNFAIR DISMISSAL AND REDUNDANCY IN THE SAME PERIOD

Annual Average Waiting Period for Dublin			
	2007	2008	2009
Weeks	20	16	31

Annual Average Waiting Period for Provincial Areas			
	2007	2008	2009
Weeks	51	31	32

COMPARATIVE FIGURES FOR CLAIMS FOR UNFAIR DISMISSAL and REDUNDANCY WHICH WERE REFERRED TO AND DISPOSED OF BY THE TRIBUNAL IN 2007, 2008 and 2009.

	2007	2008	2009
Unfair Dismissal			
Cases Referred	1,127	1,538	2,488
Cases Disposed	1,024	1,224	1,182
Redundancy			
Cases Referred	637	1,407	3,008
Cases Disposed	546	1,038	1,420



ANNEXE 2
DISTRIBUTION OF COMPENSATION AWARDED BY THE TRIBUNAL
IN DETERMINATIONS OF UNFAIR DISMISSAL IN 2009

Total Awarded: €3,039,791.83
Total Number of Determinations of Unfair Dismissal
Average €14,008.26

Compensation Award €	Number	Compensation Award €	Number
0	3	5001-6000	7
1 - 250	1	6001-7000	8
251 - 500	7	7001-8000	7
501 - 750	4	8001-9000	8
751 - 1000	10	9001-10000	14
1001 - 2000	17	10001-15000	29
2001 - 3000	12	15001-20000	23
3001 - 4000	6	20001-25000	16
4001 - 5000	17	>25001	28

Re-instatement was ordered in 5 cases

Re-engagement was ordered in 6 cases



ANNEXE 3 (A)

NUMBER OF SITTINGS OF THE TRIBUNAL AT VARIOUS VENUES IN 2009

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
Athlone	32	Bantry	1	Ballaghaderreen	4	Cavan	28
Carlow	24	Clonakilty	1	Ballinasloe	2	Donegal	5
Drogheda	6	Clonmel	16	Carrick-on-Shannon	5	Letterkenny	50
Dublin	482	Cork	145	Shannon		Monaghan	18
Dundalk	22	Ennis	35	Castlebar	35		
Kilkenny	23	Horse & Jockey	7	Galway	12		
Longford	16	Killarney	18	Loughrea	60		
Mullingar	9	Limerick	81	Roscommon	5		
Naas	41	Mallow	9	Sligo	33		
Navan	21	Nenagh	8				
Portlaoise	19	Skibbereen	3				
Tullamore	25	Thurles	4				
Wexford	36	Tralee	25				
Wicklow	27	Waterford	44				
TOTAL	783		397		156		101



ANNEXE 3 (B)

**PARTICULARS OF TRIBUNAL SITTINGS IN 2009
Between 1st January – 31st December 2009**

No. of 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	No. of Venues Tribunal sat.
228	0	5	11	16	31	57	108	40

Total No. of Sittings	1 Division	2 Divisions	3 Divisions	4 Divisions	5 Divisions	6 Divisions	7 Divisions	Number of Sittings	
								Dublin	Provinces
1437	0	10	33	64	155	342	756	482	955