An Binse Achomhairc Fostaíochta
Employment Appeals Tribunal

50 Years of the Employment Appeals Tribunal

1967 to 2017

50 YEARS OF THE EMPLOYMENT APPEALS TRIBUNAL

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Mission Statement

'To provide an inexpensive and relatively informal means for the adjudication of disputes on employment rights under the body of legislation that comes within the jurisdiction of the Tribunal'

CHAIRMAN'S FOREWORD

It is with great pleasure that I present this 50 year History of the Employment Appeals Tribunal. The purpose of the History is to remind those who know, and inform those who do not, how the Tribunal operated over the years since its establishment under the Redundancy Payments Act 1967.

From an initial slow start with jurisdiction under one Act, the Tribunal's remit grew to include the 18 pieces of legislation under which it currently operates. The work of the Tribunal really took off with the enactment of the Unfair Dismissals Act 1977. Consequently, the Tribunal grew from 16 members in 1968 to 131 at its peak.

The Tribunal proved to be a valuable part of the employment rights machinery over the past 50 years and, as it is now winding down, it is appropriate to mark its positive elements and achievements. The Tribunal takes great pride in how it hears the cases before it. I believe that the outstanding features of the Tribunal are its tripartite nature, its application of fair procedures, its use of cross examination and holding oral hearings in public. Openness, transparency and accountability are the hallmarks of how the Tribunal operates. The contribution of the lay members of the Tribunal is invaluable, giving balance to the hearing and the decision-making process. Lay litigants are always facilitated and the Tribunal treads carefully between assisting a lay litigant in putting his/her case before the Tribunal and fulfilling its role as an independent adjudication body.

I have had the honour of working with great colleagues, whose knowledge, experience, expertise and wisdom – and indeed, good humour – contributed greatly to our work. And here, I remember those who are unfortunately no longer with us. The spirit of the Tribunal members has, in my experience, consistently been one of openness and fairness.

The work and support given by the Tribunal secretariat I hold in equal value. They make a unique and wonderful contribution to the work of the Tribunal. This includes both the secretaries of the divisions and the administrative staff in Head Office. They provide an excellent service, not only for the Tribunal but for the parties appearing before it.

I worked with five Tribunal Secretaries, one as a Vice-Chair (Dan Horan), and four as a Chairman (Breda Cody, Dominic McBride, David Small and Frances Gaynor). The Tribunal was most fortunate with the calibre, dedication and loyalty they each brought to the Tribunal. The Tribunal is grateful to the Department for the resources which made all of this possible.

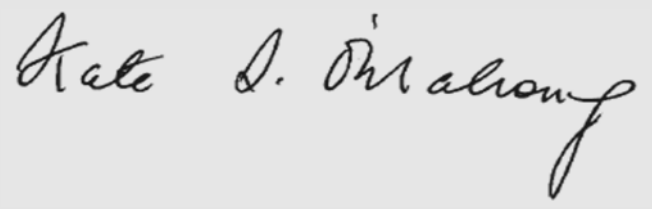
It has been a great privilege for me to be part of a body that is so conscientious in its duty to give a fair hearing to the cases that come before it. The Tribunal actively participated in two major reform programmes as well as two Departmental reviews over recent years. The last reform programme has resulted in the streamlining of the workplace relations bodies. It is indeed a cause of great sadness to me that I have to preside over the dissolution of the Tribunal. Rather than consider the loss it will be to the workers and employers of Ireland, I would rather focus on the strong role the Tribunal has played in establishing fundamental principles in employment rights law that will guide those involved in employment rights disputes into the future.

50 YEARS OF THE
EMPLOYMENT APPEALS TRIBUNAL

It has been a privilege to be part of the team that has produced this booklet. I particularly want to thank the authors of the various chapters and we all wish to express our gratitude to Mary Maher for the editorial flair that she brought to the process. Wonderful memories were evoked and many moments of laughter were shared during this process. There was an enormous contribution from the Secretariat for which I am deeply grateful. In particular I thank Ronan Connolly for his creative contribution to the design of the final product. I hope this document is a valuable record of what the Employment Appeals Tribunal is all about.

Finally, none of this would have been arisen without the great work carried out by you, the members of the Tribunal – Thank You!

Yours sincerely



Kate T O'Mahony BL

Chairman

April 2017

Protection for those in the Workplace

Kate T O'Mahony BL

A new forum

The era of modern statutory employment rights began to dawn with the enactment of the Redundancy Payments Act 1967, which conferred a legal right on employees. It was recognised that there was a need for a forum suited to resolving disputes arising under the Act and to arrive at a decision that was legally binding on the parties. To this effect the Redundancy Appeals Tribunal was established under section 39 of the Act.

The Tribunal is an independent quasi-judicial statutory body. Its sole function is to adjudicate on individual employment rights disputes, which arise under various employment protection statutes and statutory instruments. The Tribunal does not deal with collective interests or industrial relations.

There is a distinction between individual employment rights disputes and collective interests/industrial relations disputes and in the processes for their resolution. There is an entitlement to vindicate alleged infringements of employment rights and a constitutional obligation exists to apply fair procedures in the adjudication of these disputes. On the other hand, voluntarism, negotiation and compromise are the hallmarks of resolving industrial relations disputes.

The Tribunal sits in divisions. Each division is comprised of a legally qualified chairman who interprets the law and two ordinary members, one drawn from each side of industry, that is, from the Trade Union side and from employer organisations. Although nominated by their respective bodies, the lay members are independent in the exercise of their functions.

Each division of the Tribunal is independent in its function. When a Vice-Chair sits in a division, s/he has all the powers of the Chairman. The three members of the division come to their task having three different perspectives. The two ordinary members, drawn from the different sides of the employment relationship, bring their knowledge, long years of experience in the workplace and their expertise to bear on their functions and the legal chairman brings experience in interpreting the law.

The tripartite nature of the Tribunal brings balance to the task of providing a fair and thorough hearing and ensures confidence in its decisions.

Research work presented by Dr. Brian Barry at a conference in UCD in July 2011 shows that over 75 per cent of respondents favoured a tripartite body at both first instance and appellate level for dealing with employment rights disputes and a majority also felt that the employment rights processes and industrial relations processes should be kept separate.

There is a risk of cross contamination of the two processes where the same body is involved in adjudicating on both employment rights disputes and industrial relations disputes. Speakers at the conference emphasised this point.

The Tribunal is supported by a secretariat, comprised of civil servants and headed by the Tribunal Secretary, all of whom are appointed by the Minister to assist the Tribunal in the performance of its functions.

As employment relationships and employment law became increasingly more complex, there was a realisation that all Vice-Chairs ought to have a legal qualification. A provision in the Redundancy Payments Act 2003 required that all Vice-Chairs have at least five years' experience as a practising barrister or practising solicitor. This section of the Act was never implemented, but in practice only lawyers are appointed as Vice-Chairs.

The term of office of the Tribunal members is set by the Minister at the time of making the appointments. Members are part-time and eligible for re-appointment. Up until 2007, the term of office was for a three-year period except for those appointed mid-term, whose warrants expired at the end of the general three-year term, along with the warrants of all other members.

While a number were always re-appointed, there was an inevitable loss of expertise and corporate knowledge at the expiry of each three-year term. For this reason, the Minister extended the term of office to a five-year period from 2010, with 50% of the first cohort of members being appointed for a three-year period and the remaining 50% for five years. Thereafter, all appointments were to be for five-year terms, thus enabling a staggering of the appointments and the retention of a core of experienced members at all times.

Membership of the Tribunal grew from 16 members in 1968 to 131 at its peak. In 2011, five County Registrars were appointed as Vice-Chairs during the course of the term.

Preventing strikes - from unrest to order

In 1977, at a time of serious industrial unrest in the country, former Minister, the late Michael O'Leary, was responsible for the enactment of the Unfair Dismissals Act 1977. This Act enabled the parties to bring finality to an employment rights dispute that otherwise might have ended in a strike.

The Unfair Dismissals Act 1977 strengthened the trade union official's position in that s/he could direct a dismissed employee to the Tribunal, an independent body, to determine the rights or wrongs of the dismissal. The Tribunal's decision took the matter out of the industrial relations arena. The role played by the Tribunal under the Unfair Dismissals Acts in preventing wildcat strikes in the late 1970s and early 1980s was crucial in the years before the period of industrial peace enjoyed in the following decades.

Under the 1977 Act, the Redundancy Appeals Tribunal became known as the Employment Appeals Tribunal. From the early 1990s on, there was an accelerated growth in employment protection legislation. Jurisdiction was conferred on the Tribunal to adjudicate on disputes under several of these Acts. The Tribunal ultimately hears claims and appeals under 18 pieces of legislation (Appendix A).

Claims and Appeals heard by the Tribunal

The major part of the Tribunal's work is adjudicating on disputes that arise from the termination of the employment relationship. This includes claims for unfair dismissal, redundancy and minimum notice as well as complaints against the decision of the Minister on employees' rights when their employer had been declared insolvent. Finally, claims in respect of holiday entitlements existing at the time of the termination of the employment can be added on to any of the aforementioned claims/complaints.

This explains why the number of claims and appeals lodged with the Tribunal during the recessions in the 1980s and the late 2000s rose substantially to 9,741 in 1985 and in the recent recession, trebled from 3,172 in 2007 to 9,458 in 2009. Over 90% of these were cases involving termination of employment.

Although extra resources were allocated to the Tribunal due to the unprecedented increase in the caseload in the period 2007 to 2010, these were not commensurate with the level of the increased workload and unfortunately a backlog developed. Despite all of this, the Tribunal disposed of 6,064 cases in 2010, with only one appeal to the High Court, which was an appeal on a point of law, with no judicial review taken.

Unfair dismissal cases take up around 95% of the Tribunal's time as these claims are the most complex and hotly contested. In recessionary years, this figure varied a little due to the large number of redundancy and minimum notice claims. The table at Appendix B shows the caseload of the Tribunal over its 50 years in existence as well as the number of unfair dismissal cases.

The Tribunal also hears appeals from the decisions of Rights Commissioners on rights disputes that arise while the employment relationship is extant and either the employee or employer can appeal a Rights Commissioner's recommendation in an unfair dismissal case to the Tribunal.

All the statistics relating to the Tribunal's workload are contained in its yearly report, which is presented to the Minister. The first Annual Report could be purchased for the sum of 6 old pence. Copies of the more recent Annual Reports are available free of charge on www.workplacerelations.ie.

Unfair Dismissal Cases – the Tribunal's main work

Dealing with claims under the Unfair Dismissals Acts is the Tribunal's main and most complex work.

Unusually, the Unfair Dismissal Act 1977 conferred an option on the parties in an unfair dismissal case to have the claim heard at first instance either by a Rights Commissioner or by the Tribunal. In the former case, either party could appeal the Rights Commissioner's recommendation to the Tribunal. This enlightened and progressive measure proved to be effective and cost efficient for the parties, as it enabled parties to obtain a legally enforceable determination at first instance from the Tribunal.

This power of election, to some extent, creates a natural division, with the more complex unfair dismissal cases being lodged with the Tribunal and the less complicated cases being lodged with the Rights Commissioners. But this is not always the case. Year on year, the majority of unfair dismissal claims are lodged with and heard by the Tribunal. However, in some of these cases, an employee may have opted for the Rights Commissioner service but the employer objected. Many employees who feel they have been unfairly dismissed or indeed employers who feel their decision is being wrongly challenged want their "day in court".

A significant right

The right not to be unfairly dismissed ranks as one of the most, if not the most, important of all statutory employment rights. The dismissed employee is in a vulnerable position without income, his/her reputation is in question and his/her future opportunities to earn a livelihood as well as his/her mental and psychological well-being are at risk.

Such employees need immediate access to justice. Every effort should therefore be made to ensure that the adjudication process is fair and has the confidence of the parties.

The Tribunal is seen as having the experience 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.

Forum for "The Ordinary Man in the Street"

The setting up of the Tribunal was an innovative move by the Oireachtas to ensure that a worker's statutory rights are given the full protection and force of the law. The Tribunal was established for this purpose at a time when the Labour Court had been in existence for twenty years.

The Tribunal is a forum to which "the ordinary man in the street" can refer a case, with the minimum of formality to have his/her rights vindicated. Non-statutory forms are used in ease of the administrative function of the Tribunal secretariat and the information provided in these forms is not in the nature of court pleadings.

Representation and Cost

Bringing a claim to the Tribunal is a free service. A party to a hearing before the Tribunal may be heard in person, or may be represented by a trade union official, a representative of an employers' organisation, a solicitor, a barrister or, with the consent of the Tribunal, by any other person.

If a party chooses to be represented, they will be responsible for the costs of such representation. The legislation does not require that a party be represented at a hearing. However, any lay litigant should be cognisant of the fact that the other party is entitled under law to have and may well have a legal or other representative.

Legal representation is invariably availed of by more employees than employers and is far higher in unfair dismissal cases than in cases under all the other Acts combined.

The issue of legal representation has been a matter of much comment. This is due to a focus on representation rather than on the nature of the infringement at issue. An alleged unfair dismissal has serious consequences for both the employee and indeed the employer who may be wrongly accused of having unfairly dismissed an employee.

The Tribunal may not award costs against any party unless, in its opinion, a party has acted frivolously or vexatiously. Such costs are confined to a specified amount in respect of travelling expenses and any other costs or expenses reasonably incurred by the other party in connection with the hearing, but shall not include any amount for the attendance of counsel or solicitors, officials of a trade union, or representatives from an employers' association. The Tribunal awards costs on this basis only on rare occasions.

Hearings in Public

Tribunal hearings are in public. Although predating both the European Convention on Human Rights Act 2003 and the Charter of Fundamental Rights of the European Union, the Tribunal has since its inception held its hearings in public. In many cases the prospect of a public hearing leads parties to reach a settlement before the hearing.

On rare occasions the Tribunal, at the request of a party where serious grounds are put forward to support the application, may decide to hear the case or part of it in private (*in camera)*. Over the 50 years of the Tribunal's hearing unfair dismissal cases, very few cases have been heard in private. The Rights Commissioner must hear unfair dismissal cases in private.

Oral evidence

The Tribunal, in accordance with its core principles of informality and accessibility, and in particular in ease of lay litigants, does not require comprehensive or any written submissions prior to the hearing. Rather, cases are heard by way of oral evidence. In *Davy v the Financial Ombudsman,* a case involving the procedures adopted by the Financial Ombudsman, the Supreme Court recognised that almost always, when facts are contested, written submissions are not sufficient and in general some form of oral hearing is required. The oral hearing places an onerous but valuable burden on members of the division hearing complex and difficult cases. This was well recognised by a trade union member, who at a training session for new members some few months subsequent to his commencement with the Tribunal, stated: "The greatest burden on the Tribunal is its own informality." (Al Butler, Trade Union member).

To perform its functions adjudicating on disputes, the Tribunal had from its inception the power to hear evidence under oath, to allow cross-examination of witnesses, to compel witnesses to appear before it and the power to compel the production of documents. In general, the Tribunal only administers the oath in unfair dismissal cases.

It is well recognised that, where facts are in dispute, cross-examination is the "the best engine" to establish the truth, which is vital to the Tribunal's endeavour. In *re Haughey* the Supreme Court recognised that the right to cross-examine your opponent is enjoyed where a party to proceedings is at risk of having his good name, person or property or any other personal right jeopardised in the proceedings.

At a Tribunal hearing, parties are free to make opening and closing statements, if they wish. The party on whom the burden of proof lies in the case gives direct evidence and is then cross-examined by the opposing party/ representative. The Tribunal members may then ask questions to clarify any ambiguous matters. That party's witnesses are heard in similar fashion followed by the other party's presenting its case in like manner.

Sometimes the Tribunal is asked to make a determination on a preliminary matter to establish whether it has the jurisdiction to hear and determine the claim. Such issues include, but are not limited to, whether there has been compliance with the statutory time limits, whether the claimant is an employee or whether the employee has identified the correct employer.

Following a hearing, the three members of the division discuss the case and reach its determination.

Settlements during the Hearing

On a not infrequent basis, the parties reach a settlement during the course of the hearing and the claimant withdraws the claim. However, in the event that the settlement breaks down or it is not honoured, the claimant or appellant is given the opportunity to continue the case at later date but must indicate that intention to the Tribunal within a specified time limit. This facility has helped to shorten many hearings and allows parties to reach their own agreement on a case rather than have a decision of the Tribunal imposed on them. The Tribunal welcomes such settlements.

Fair Procedures

The hallmarks of the Tribunal are its insistence on the parties' rights to fair procedures and having a thorough hearing in public. These procedures include both the principles of natural justice and constitutional justice. The principles of natural justice include *audi alteram partem* (both sides must be heard) and *nemo judex in causa sua* (cannot be a judge in your own case). The Supreme Court has recognised that the latter principle is of limited application in many unfair dismissal cases. As Keane J stated:

> *"the* nemo judex in causa sua *requirement cannot be literally applied to every employer confronted with a decision as to whether or not he should dismiss a particular employee. If it were, an employer could never dismiss an employee, since he would always be an interested party in the decision."*

However, it is well established that the initial decision maker should not be part of the decision making at the appeal stage.

Constitutional justice imports more than the two principles of natural justice giving additional rights to a party including *inter alia* the right to cross-examine your opponent and the right to give rebutting evidence. What the constitution requires may vary with the circumstances of the case.

While the rules of evidence may frequently be less stringently applied in proceedings before the Tribunal than in the courts, they cannot be relaxed to a level that would imperil the parties' constitutional right to a fair hearing.

In its procedures the Tribunal is in compliance with its obligations under the *Charter of Fundamental Rights of the European Union* and the European Convention on Human Rights Act 2003 (Appendix C).

Judicial Review etc

Unfair dismissal determinations can be appealed to the Circuit Court. There is an appeal on a point of law to the High Court under several pieces of employment protection legislation. Through its judicial review jurisdiction, the High Court supervises the manner in which the Tribunal conducts its hearings, its application of fair and constitutional procedures and ensures that it acts within jurisdiction.

The Supreme Court has repeatedly stated that it relies on the specialist expertise of tribunals and is very reluctant to interfere with their findings of fact. This puts an onus on the Tribunal to rigorously examine the evidence adduced before it to ensure it establishes the relevant facts on which its decisions will be based.

There is a low level of appeals/judicial reviews of Tribunal decisions taken to the superior courts, and an extraordinarily low level of Tribunal determinations are overturned in any year. This is a testament to the procedures the Tribunal applies and is bound to apply. Parties generally feel their cases are fully aired at the Tribunal hearing and accept its decision.

The Tribunal is Cost Efficient

The Tribunal has low budget requirements despite its high caseload. Its members, being part-time, are paid on a per diem basis and do not have pension, holiday or sickness entitlements. Its members are only paid on the basis of work done, except for receiving a fraction of their fees where they have been retained but the case is cancelled within 24 hours of the hearing. Apart from the Rights Commissioner's service, the Tribunal has by far the highest caseload and the lowest cost. It is widely accepted that the Tribunal provides a cost efficient means for the resolution of employment rights disputes.

The European Association of Labour Court Judges (EALCJ)

The Tribunal is a member of the European Association of Labour Court Judges (EALCJ). This body provides a forum for building upon the working relationship that already exists between most employment rights bodies in Europe. This interaction develops a greater understanding of the statutory employment rights conferred on workers in Europe and the various systems for the vindication of those rights.

Two Chairmen of the Tribunal served as President of the EALCJ. In October 2001, the EALCJ Conference was hosted by Ireland in Dublin Castle with the support of the Minister and the Department. The then Tánaiste, Ms Mary Harney, T.D. and Minister for Enterprise Trade and Employment, formally opened the Conference and Mr Tom Kitt, T.D. and Minister for Labour Affairs was in attendance.

The Legacy and Spirit of the Tribunal

The Tribunal has built up a corpus of employment law over the past 50 years which is a guide for employers and employees. In the early years of the Tribunal's work, the ratio of success was 2:1 in favour of employees but once management became acquainted with fair procedures, this ratio reversed. In recent years the ratio is moving close to par.

As put so well by Megarry J in 1970 and quoted with approval in our superior courts over the decades, the following statement, aptly describes the attitude of the members of the Tribunal to their work:

> *"It may be that there are some who would decry the importance which the courts attach to the observance of the rules of natural justice. 'When something is obvious', they may say, 'why force everybody to go through the tiresome waste of time involved in framing charges and giving an opportunity to be heard? The result is obvious from the start.' Those who take this view do not, I think, do themselves justice. As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases, which somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of the events."*

In my experience, no matter what the nature of the alleged wrongdoing, the members of the Tribunal adopt this openness of mind.

Composition and Operation

Peter O'Leary BL

The fundamental principle underlining the meaning of a Tribunal is that it is an adjudicating body that makes binding decisions, and its tripartite nature is derived from the fact that it hears both sides in a case, i.e. the adjudication body, and the two sides in a case constitute the Tribunal.

Modus Operandi same as a court

A Tribunal is not a court, but its modus operandi is the same as a court with its jurisdiction being limited by statute. Of course, the only courts provided for in the Constitution are the High Court and the Supreme Court, with the Circuit and District Courts being creatures of statute as permitted by the Constitution.

The Minister appoints a Chairman of the Tribunal and that person is in overall charge of the Tribunal. The Employment Appeals Tribunal adjudicating body is composed of three panels: one appointed directly by the Minister, composed of solicitors or barristers and this panel supplies members to sit as Chairmen of Tribunal Divisions.

The national employer organisations recommend a list of persons to the Minister as suitable to sit on the Tribunal and the Minister appoints them to sit on the Tribunal's employer panel. The Irish Congress of Trade Unions also recommends a list of persons to the Minister, who then appoints them to sit on the employee panel.

Less formal than a Court

The workplace experience supplied by the two non-legal members of the Tribunal make the hearings of the Tribunal a lot less formal than that of a Court and experienced practitioners who have appeared before the Tribunal can aver to this being the case.

There is an opinion that a one member adjudicating panel would be cheaper and more efficient for the purpose of the hearings. This was the case with the Unfair Dismissals Acts where cases could be brought to a rights commissioner at first instance.

The best way of testing the public perception of a system is to see its reaction by giving them the option. This is done under the legislation and, in looking at statistics on Unfair Dismissals applications, it is seen that, of all cases heard under the legislation, 60% of parties preferred going directly to the Tribunal in the first instance.

This composition was the best possible decision that could ever be achieved, in that each division of the Tribunal has members with vast experience from both sides of industry, many having served their working lifetime involved at the coalface of Industrial Relations. To add to this, the Vice-Chairs were usually experienced barristers or solicitors who had professional training and experience. This ensures that the hearings adhere to the principles of natural justice and fair procedures.

The secretariat is furnished by the Department to the Tribunal to assist in the management of the affairs of the Tribunal, and each panel of the Tribunal when hearing a case is attended by a member of the secretariat who acts as a secretary to the division hearing the case.

Operation in many places

The Tribunal usually sits in places to which the public has easy access such as courthouses, hotels, community centres etc. In addition to a hearing room the Tribunal is usually provided with a smaller room for the Tribunal to give consideration to matters that arise at a hearing and also, if possible, rooms for the parties to have a consultation before the hearing. These facilities are the facilities provided by the Tribunal in its headquarters at Davitt House, Adelaide Road, Dublin 2.

An adjudicating body should always hold its hearings in public unless justice demands that it be held in private due to the special circumstances of the case i.e. that a party to the proceedings would be seriously prejudiced by the hearing being held in public.

The Tribunal has always held its hearings in public save in those special circumstances. A decision on what constitutes special circumstances is always made prior to the commencement of the proceedings usually on an application of a party or if the information before the Tribunal indicates that such a case might require an investigation to establish if it should be held in private. This happens very rarely and the preponderance of cases are held in public.

A floor of rights to employees

The legislation under which the Tribunal operates was enacted by the Oireachtas to give a floor of rights to employees. The Unfair Dismissals Acts 1977-2007 places the onus of proof on the employer to prove that the dismissal was fair in all the circumstances. In cases then where dismissal is not in dispute, the employer goes first into evidence. Evidence is taken on oath at the hearings and each witness is examined, cross-examined and re-examined where necessary.

The reason this procedure is used is that it gives immunity to the proceedings and anything said in evidence by witnesses at a hearing is immune from prosecution. This procedure may also be used in all cases which come under the jurisdiction of the Tribunal that are contested by the parties. In cases where dismissal is denied by the employer, as in constructive dismissal cases, the onus of proof of dismissal rests with the claimant and the claimant's side goes first into evidence.

In most cases under the Unfair Dismissals Acts, the claimant will also have a claim under the Minimum Notice and Terms of Employment Acts 1973-2005 and perhaps also an alternative claim under the Redundancy Payment Acts 1967-2014.

The EU Transfer of Undertaking Directives, which are implemented into Irish Law by Statutory Instrument, show the value of the composition of the Tribunal. Cases involving this legislation can be very difficult, can include more than the usual two parties, and can take a number of days to hear.

It is not always evident from the claim form that such a matter is likely to arise and indeed this question often arises only at the opening stage of a case by the employer, thus requiring the joining of a previous employer of the claimant at that time. This has the effect of delaying and prolonging the hearing of the case.

One essential reason for having a properly qualified chairperson of a Tribunal such as either a barrister or a solicitor, is that all lawyers will be properly versed in the rules of fair procedures. The two main heads for fair procedures are *audi alteram partem* (hear the other side) and *nemo judex in causa sua* (no one can be a judge in his own cause). Every hearing where the rights of a party are in jeopardy must be conducted with these principles foremost in the mind or minds of those adjudicating on the matter.

The Act that changed our working life

Dermot MacCarthy SC

The Tribunal was established as a tripartite body to deal with issues that would arise under the Redundancy Payments Act of 1967.

At the time Ireland was undergoing major economic changes as a result of the Sean Lemass/TK Whitaker decision to open up the economy, which followed several decades of tariff protection. In the early 1960s, detailed studies were made of different sectors of industry to help adjust to conditions of freer trade, with a view to entry into what was then called the Common Market.

It was realised that many industries - such as motor assembly, paper manufacture, and clothing and footwear - would face major difficulties. That is, if they would survive at all.

So it was public policy to attract new industries, usually from abroad, which would be export-orientated, with access to the wider European market. This would cause major job losses in the traditional protected industries, which hopefully would be offset by new jobs in the newer industries.

Workers would have to be re-trained for work in those industries, so the Industrial Training Act was passed in the same year as the redundancy scheme was set up to provide some compensation for the workers who lost their jobs in the process. That Act did not establish a Tribunal, but it did provide that a Tribunal would be established to address issues that would arise in the levy/grant scheme. It was envisaged that this would be the same Tribunal to be set up under the Redundancy Payments Act.

The Adjective that spawned a new noun

The word "redundancy" is a noun derived from the adjective "redundant", which was originally used to describe surplus or unnecessary words in a document, and sometimes used by judges in interpreting statutes. Redundancy was taken up by economists, who frequently borrowed words from other disciplines to describe economic concepts, or to refer to factors of production – land, labour and capital – that was "surplus to requirements."

The Redundancy Payments Act applied this definition in section 7(2)(b): "the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where he was so employed have ceased or diminished or are expected to cease or diminish." Lawyers had difficulty with this wording, and the intended meaning failed its first test in the High Court. This led to an amending Act which widened the definition to include reduction in employee numbers or changes in the training or qualifications of the employee.

Those who knew it when they saw it

Economists and lawyers apply different concepts and use language differently, but the Tribunal had the advantage of including members with experience of the workplace and the world of business, who might not use the language of either economists or lawyers, but who knew a redundancy when they saw one. Before that High Court case, the Tribunal had been applying the original definition for about a year.

There were other concepts in the redundancy scheme which also caused problems at the time for lawyers who were trained in the Common Law. The Act defined an employee as someone who worked under a contract, and contract is basically a Common Law concept.

Common Law is generally concerned with duties and rights, and the maxim was "one man's duty is another man's right". Statute law also prescribes what should or should not happen. Economists, by contrast, look at what did happen, rather than what should happen.

To some extent the redundancy scheme takes that approach too, and has a historic perspective, as redundancy payments are calculated based on length of service. At the time the Act was passed, this would of course include service before the Act, for which the employer would be liable, and there was thus a retrospective liability, which usually did not arise under Irish law.

When work was week to week

The Act applied only to those who were in employment which was insurable for all purposes. At the time, only certain categories of workers were governed by this provision, generally manual workers or those who were below a certain income level - what used to be called "blue collar workers". These would usually be paid weekly, and the old Common Law approach was that such workers were employed from week to week, unless a contract of employment provided otherwise. At the time written employment contracts were rare for such workers. Thus an employer was entitled to dismiss such workers on one week's notice.

By contrast the redundancy scheme took a historic view at what did happen, rather than what should have happened, or at a party's rights or duties at the time. This was a fundamental change in the status of employees, which at first applied only in a redundancy context, and, since it did not derive from contract, some lawyers described it as giving an employee a quasi-property right in his job.

Continuity preserved, only actual work reckonable

These people may have had other jobs which they did not want to leave at that time, so the person next on the list would be called, and the person who did not attend would not go to the end of the list but to a position below the last person who answered the call. The Tribunal held that continuity was preserved by this arrangement, but that only the periods of actual work were reckonable service.

A similar approach was taken to seamen in respect of the time they actually spent on a ship. For some centuries, seamen would sign up for a journey, which in those days might take up to three years or more, and then spend a prolonged time at home before signing up for another journey. In that case, the company had a large fleet of ships and the seamen had consistently gone back to ships belonging to that company, but not necessarily the same ship.

Admiralty law was for a long time quite clear that each journey was a separate employment, but the Tribunal held that continuity was preserved while the time spent at home was not reckonable, and this finding was upheld on appeal to the High Court.

Casual, seasonable, temporary

Seasonal and casual workers were particularly affected by this historic approach. Before the Act of 1967, each period of work was seen as separate employment, but the Tribunal was able to "stitch" these periods together using the provisions of the Act relating to continuity together with a historic analysis of the (verbal) contract of employment that, as the workers had in practice returned to work in the following season, it had been "contemplated" by both parties at the end of a season that work would resume the following season. This might have led to an anomalous result that two workers, one full-time and one seasonal, who started work at the same time, would have the same length of service, and the same redundancy entitlements.

But the Tribunal applied another provision of the Act to prevent that result. The Act created the legal concept of lay-off to apply to a temporary break or interruption of work, and the Tribunal regarded the off-season period as lay-off. The Act also created the concept of "reckonable service" as distinct from "continuous service" in calculating redundancy payment and provided that lay-off was not reckonable.

A similar analysis was applied to "casual" workers. This was a fundamental change in the status of such employees. These principles were later applied to other employees of different kind. A film studio had an arrangement with some Trade Unions for craftsmen to be placed on a panel where each craftsman was given a number. When work on a new film was about to start, the studio would call on the members in the numerical order on which they appeared in the list.

Effects of the Unfair Dismissals Act in the employment arena

Neil Ormond

The negative impact of unfair dismissal

- Devastating impact on the dismissed individual
- Cost to the employer – the loss of a trained/ skilled employee who perhaps could be rehabilitated; or the cost of replacement
- Possible challenge to Trade Unions and the collegiality of fellow employees

The positive influence of the Unfair Dismissals Act

Prior to the Unfair Dismissals Act, any or all of the above could impact in an uncontrolled way – clearly on the dismissed employee, most likely on the company and probably on fellow employees and Trade Unions where involved.

The introduction of the Unfair Dismissals Act – presuming as it does that the dismissal is unfair until the contrary is shown – prompted a discipline on employers to deal with individual employee issues in a supportive and constructive manner.

For fellow employees, it created an awareness that, whatever the issues, they were being dealt with fairly and constructively and generally promoted a better industrial relations environment.

For Trade Unions, the knowledge that unfair action by an employer could be dealt with at a level removed from the enterprise, helped in their control of what might otherwise be an emotive situation with the local membership.

The Employment Appeals Tribunal and Improved Industrial Relations

Gerry McAuliffe

The Unfair Dismissals legislation and the Employment Appeals Tribunal have been responsible for the achievement of significant improvement in the conduct of industrial relations and human resources management in the Republic of Ireland.

Employers and unions saw that referral of dismissal and individual rights issues to the Tribunal was the way to proceed and, as a result, the incidence of unofficial and wildcat walk-outs in support of individual grievances gradually reduced.

Trade Unions and employers invested in industrial relations and human resources training, and the use of correct procedures. This had spin-off benefits for industrial relations generally and for the role and standing of the HR function within enterprises.

The Tribunal developed a profile within the general working population such that non-unionised employees, as well as those who were members of Trade Unions, availed of its services, both under the Unfair Dismissals Act and other labour legislation. In recent years, many senior management executives have had the benefit of Tribunal determinations under the Unfair Dismissals Act.

The general consensus is that the structure and procedures of the Tribunal always ensured a fair hearing process, consistent with the evidence presented.

The Secretariat

Tom O'Grady

When I was appointed to the Tribunal in 2010, it was by then a 'well-oiled machine'. Prior to my appointment I worked with Ibec, which meant I helped companies make their cases at Tribunal hearings. During that time, I was always impressed by the staff of the Tribunal secretariat.

It is a nerve-wracking occasion for all parties prior to appearing before the Tribunal. The secretaries helped us to settle in the building before the hearing. If a hint was given that prior talks might be fruitful, they facilitated talks between both sides.

When I became a member of the Tribunal, my admiration for the secretariat increased. They showed themselves to be excellent intermediaries between the Tribunal and the participants on the day. Furthermore, their vast experience, gained at the hundreds of hearings that they attended, was readily available at all stages of the hearing, especially at the decision-making time. As we know, it was because of the Government's embargo on recruitment that the Tribunal's waiting list increased.

The staff of the secretariat have contributed in a massive way to the profound impact that the Tribunal has had on Irish industrial relations.

Some quirky moments...
when even the chairman smoked...

Ciaran Ryan

The Employment Appeals Tribunal started as the Redundancy Appeals Tribunal with John Gleeson as first Chairman. He was a Fine Gael man, appointed by the then Taoiseach Jack Lynch of Fianna Fáil – two decent men.

John Gleeson regarded the Redundancy Payments Act as benevolent legislation, and I was given many examples of that from my boss, John Collins, Assistant General Secretary of the Union now known as Mandate. John was appointed to the Tribunal on its inauguration 50 years ago.

Reflect on the real world of that time when workers could be terminated at the whim of an employer and a long service man or woman could be dispatched without notice or compensation. A non-union worker was especially vulnerable.

Peace and Fairness

When my brother returned to Ireland in the early 1970s after 20 years in Canada, he remarked to me that in listening to the RTE news in Irish, he had learned a new word which featured almost nightly on the news: *stailc neamh-oifigiúil*. Many of these unofficial strikes were the result of dismissals. Whether justified or not, the culture of the day was to mount an immediate picket, resulting in real economic damage to the economy of the country and the workers involved.

The arrival of the Unfair Dismissals legislation changed all that. It brought peace and, even more importantly, it brought fairness. The Tribunal was composed of a legally qualified chairman and members nominated from Trade Unions and employer bodies. The latter two groups were expected to shed the baggage of their background and approach each case on its merits. My experience as a user of the Tribunal for 30 years, and a member for some 18 years, satisfies me that all approached this task honestly and without bias.

Chairman overruled by members in famous case

An interesting example of this was the famous case of a woman teacher in a convent school who was dismissed because her relationship with a local man breached the religious ethos of the school. This high profile case attracted much attention and the Tribunal upheld the decision to dismiss as being fair. The feature of the decision was the fact that the two members of the Tribunal were of that opinion, whereas the chairman of that Tribunal entered a minority opinion that the dismissal was unfair.

On a personal note, my interaction with the Tribunal began as a young Union official representing workers from the retail world. I then represented companies in the body now known as Ibec in many cases throughout the country, and finally, as General Secretary of The Irish Bank Officials Association, I represented officials in their hour of need.

Cigarettes, sharp words, bad backs and boulders

Looking back, it is not the high profile cases that stick in my memory, but rather the odd or quirky moments that come to mind. In the early days, all participants in tribunals smoked throughout the working sessions. Chairman Donal Hamilton was a smoker and, in one case in Clonmel, a witness who was under heavy pressure of cross-examination, bought himself some time by politely asking the chairman if he could borrow a cigarette. I have seldom seen that chairman so lost for words.

A colleague related to me a case of a fiery exchange between a witness and the claimant, when the witness said: “he called me a liar…” The claimant’s indignant response was: “I did not!”, only to add “I called you a f***ing liar!”.

We all remember the case of the man off work with a bad back who was caught in a ditch with a crowbar trying to move an enormous boulder. His response was that the doctor ordered this as therapy.

I recall doing a case in a transport company in the Midlands who had dismissed a driver in a questionable fashion. Following a row in the yard, the boss had suggested to the driver in forcible and colourful terms that he might pursue his career elsewhere.

This was not the most promising case to defend, but the claimant had a fatal flaw of pride. At the end of the case, when it came to establishing what loss the man had suffered, he was asked about new work. He advised the Tribunal that he was “flying!” He had bought his own truck and was now earning vastly more than he had ever earned with the miserable employer who stood before the Tribunal.

Oh Dear!

Militant regimes of the past replaced

Over the years both the Irish Congress of Trade Unions and the Irish Management Institute have run courses on employment legislation and this has benefitted society in general. Companies introduced fair and equitable procedures which replaced the militant regimes of the past. Workers were protected if they paid due regard to the procedures and maintained a reasonable standard of performance.

There have been assertions that the operation of the Tribunal has been too legalistic, but in all my dealings with the body I have not seen this. If an employer or a worker is not represented, Chairmen of the Tribunal have been supportive of them in even measure. Also, the Tribunal secretariat has been of immeasurable help in this situation, as they are in every other area of the Tribunal’s endeavours.

The moves of a former Minister to replace the Employment Appeals Tribunal with a Workplace Relations system which will provide “a world class service” have been debated by more articulate people than me so I’ll not enter that arena. Anyway that could become a *sub judice* area.

In conclusion, I feel the wheel has turned full circle. Sadly I note that after some 18 years on the Tribunal, my services are no longer required by the Minister.

Could anyone advise how I go about claiming under
The Redundancy Payments Acts?

TOUCHÉ

by Seamus O'Donnell

It was a cold and filthy night in the early part of 1993. The Tribunal had been sitting in a small town over 150 miles from Dublin, and I was driving some 15 miles back to the county town where we were to sit for the rest of the week.

It was past 8 o'clock when the hearing had finished. The Chair had been most anxious to finish the case which was on its second day. We had been sitting in a small converted church with no heating except for a one-bar electric fire at our backs, in an outside temperature around zero.

Despite the discomfort of the surroundings, the day was brilliantly illuminated by a short exchange between the claimant's solicitor and his client at the commencement of her evidence.

The case concerned the dismissal of the secretary of a local charity. It was run by a voluntary committee, consisting of a chairman and some eight or nine locals. The claimant was a Dublin based civil servant who had obtained the position while she was on a career break. In addition to her secretarial and bookkeeping duties, she was to attend and take the minutes of the monthly committee meetings.

The reason for her dismissal, taken at a meeting at which she was not present, was principally for alleged incompetence, and the main witness on behalf of the employer was the committee chairman.

During his long evidence, which was given over the entire first day of hearing plus half of this second day, it emerged that the main problem was the veracity and quality of minutes produced by the claimant. Much time was spent eliciting what was exactly wrong with the minutes. Suffice it to say the evidence given by a committee member was that it always took over an hour to have the minutes of the previous meeting ratified, before the first item on the current agenda was taken. This was due to criticisms raised by the chairman regarding phraseology, grammar or the manner of recording the actual decisions taken.

It was almost 6 o'clock by the time the employer's case had concluded. The claimant's solicitor indicated that he had just one witness, the claimant. On the recommendation of the chairman, and despite the lateness of the hour, and the continuing discomfort, the members agreed to finish the hearing.

The claimant took the oath and her solicitor rose to his feet, placed his right foot on his chair, his right elbow on his knee and after the claimant had identified herself, illuminated the proceedings in an exchange which I have never forgotten:

"Thank you, Miss. Just before you commence your evidence – one point: You're a civil servant, aren't you?"

"Yes, Sir"

"What grade or level are you?"

"I'm an EO, Sir"

"Oh, an EO. And, by the way, what Department do you work in?"

"The Department of External Affairs, Sir"

"The Department of External Affairs?" He repeated the words slowly as if tasting his favourite wine. "The Department of External Affairs……that's a very important Department, Miss. And … what was your job?"

"I was a secretary, Sir"

"Did you have to attend meetings during your duties?"

"Yes, Sir"

"Did you ever take minutes of meetings?"

"Yes, Sir, many times."

"And just as a matter of interest, can you remember what would be the most important meeting at which you took minutes?"

The witness paused for a few moments. He waited expectantly.

"That, Sir, would be a meeting in Belfast in 1985 concerning the Anglo-Irish Agreement . "

"Thank you, Miss, now would you tell the Tribunal……

THREE PILLARS OF THE TRIBUNAL

KATE T O'MAHONY BL

Dermot MacCarthy SC, Moya Quinlan and Peter O'Leary BL are the three pillars of the Tribunal and are imbued in the law and practices of the Tribunal. In the years when sweeping changes were made to the Vice-Chairs' panel, they brought continuity, experience and their vast store of accumulated knowledge of employment law. Each of the three are highly respected Vice-Chairs.

Dermot MacCarthy SC

Dermot, with 48 years' service on the legal panel of the Tribunal, is the longest serving member of all Tribunal members.

He honed his excellent adjudicative skills under the tutelage of the first Chairman, John Gleeson, SC

Dermot is an authority on all employment legislation and is the recognised expert in redundancy.

Moya Quinlan

Moya brought the true spirit of an industrial court to her work on the Tribunal.

During her 38 years' service as a Vice-Chair, she was vigilant to ensure the Tribunal retained its informality but also expected legal representatives to have the legal issues well researched.

Moya had the honour of being the first Lady President of the Incorporated Law Society.

Peter O'Leary BL

Peter has 31 years' experience as a Vice-Chair on the Tribunal.

He brings acute analytical skill and a wealth of experience to bear on his work with the Tribunal.

Although Peter wears his vast expertise lightly, he is unfailingly generous in sharing it and his time with all those involved in the work of the Tribunal.

APPENDIX A

The Employment Appeals Tribunal is a statutory body established to deal with and adjudicate on employment disputes under the following statutes:

Redundancy Payments Acts 1967 to 2014

Minimum Notice and Terms of Employment Acts 1973 to 2005

Unfair Dismissals Acts 1977 to 2015

Protection of Employees (Employers' Insolvency) Acts 1984 to 2012

Organisation of Working Time Act 1997

Maternity Protection Acts 1994 and 2004

Payment of Wages Act 1991

Terms of Employment (Information) Acts 1994 to 2014

Adoptive Leave Acts 1995 and 2005

Protection of Young Persons (Employment) Act 1996

Parental Leave Acts 1998 and 2006

Protections for Persons Reporting Child Abuse Act 1998

European Communities (Protection of Employment) Regulations 2000

Carer's Leave Act 2001

Competition Acts 2002 to 2014

European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003

Consumer Protection Acts 2007 and 2014

Chemicals Acts 2008 and 2010

These Acts have been amended by the Workplace Relations Act 2015. However, the Tribunal must operate, in relation to dealing with its legacy cases, on the basis of the unamended Acts.

CASES LODGED WITH AND DISPOSED OF 1968-2016

APPENDIX B

	REFERRED			DISPOSED		
Year	**All**	**UD ONLY**	**UD % OF Total**	**All**	**UD ONLY**	**UD % OF Total**
1968	209	n/a	**n/a**	154	n/a	**n/a**
1969	451	n/a	**n/a**	435	n/a	**n/a**
1970	530	n/a	**n/a**	514	n/a	**n/a**
1971	1,050	n/a	**n/a**	850	n/a	**n/a**
1972	1,100	n/a	**n/a**	1,176	n/a	**n/a**
1973	1,035	n/a	**n/a**	1,052	n/a	**n/a**
1974	1,790	n/a	**n/a**	1,436	n/a	**n/a**
1975	2,313	n/a	**n/a**	2,217	n/a	**n/a**
1976	2,118	n/a	**n/a**	2,127	n/a	**n/a**
1977	2,001	82	**4%**	2,050	21	**1%**
1978	1,506	326	**22%**	1,249	203	**16%**
1979	1,410	402	**29%**	1,347	459	**34%**
1980	2,478	754	**30%**	1,691	488	**29%**
1981	2,715	787	**29%**	3,015	864	**29%**
1982	4,134	1,125	**27%**	3,503	1,004	**29%**
1983	5,501	1,264	**23%**	4,914	1,080	**22%**
1984	5,654	1,133	**20%**	5,493	1,349	**25%**
1985	9,741	1,053	**11%**	10,080	1,270	**13%**
1986	8,019	1,005	**13%**	6,744	838	**12%**
1987	8,604	971	**11%**	7,182	943	**13%**
1988	6,149	1,147	**19%**	8,324	1,272	**15%**
1989	4,523	816	**18%**	4,922	856	**17%**
1990	5,969	798	**13%**	5,819	636	**11%**
1991	4,954	987	**20%**	4,844	891	**18%**
1992	6,574	1,093	**17%**	5,807	1,046	**18%**
1993	5,792	1,212	**21%**	5,789	1,002	**17%**
1994	4,840	1,178	**24%**	4,531	1,138	**25%**
1995	5,225	1,180	**23%**	4,812	935	**19%**
1996	4,069	1,133	**28%**	4,116	1,112	**27%**
1997	3,430	984	**29%**	3,764	1,209	**32%**
1998	3,626	939	**26%**	3,677	957	**26%**
1999	2,985	941	**32%**	2,695	867	**32%**
2000	3,377	808	**24%**	3,199	762	**24%**
2001	5,257	957	**18%**	3,994	737	**18%**
2002	6,259	1,311	**21%**	4,602	970	**21%**
2003	5,596	1,518	**27%**	6,096	1,146	**19%**
2004	3,754	1,419	**38%**	3,657	1,401	**38%**
2005	3,727	1,414	**38%**	3,515	1,419	**40%**
2006	3,480	1,291	**37%**	3,228	1,204	**37%**
2007	3,173	1,127	**36%**	2,861	1,053	**37%**
2008	5,457	1,538	**28%**	4,007	1,224	**31%**
2009	9,458	2,489	**26%**	4,680	1,182	**25%**
2010	8,778	2,157	**25%**	6,064	1,210	**20%**
2011	8,458	2,107	**25%**	6,723	1,599	**24%**
2012	5,623	1,742	**31%**	7,624	1,791	**23%**
2013	4,168	1,578	**38%**	5,304	1,669	**31%**
2014	4,162	1,648	**40%**	4,403	1,500	**34%**
2015	2,630	1,074	**41%**	2,679	1,183	**44%**
2016	30	15	**50%**	2,762	1,114	**40%**
TOTALS	**203,882**	**45,503**	**22%**	**191,727**	**41,604**	**22%**

APPENDIX C

Obligations under International Instruments

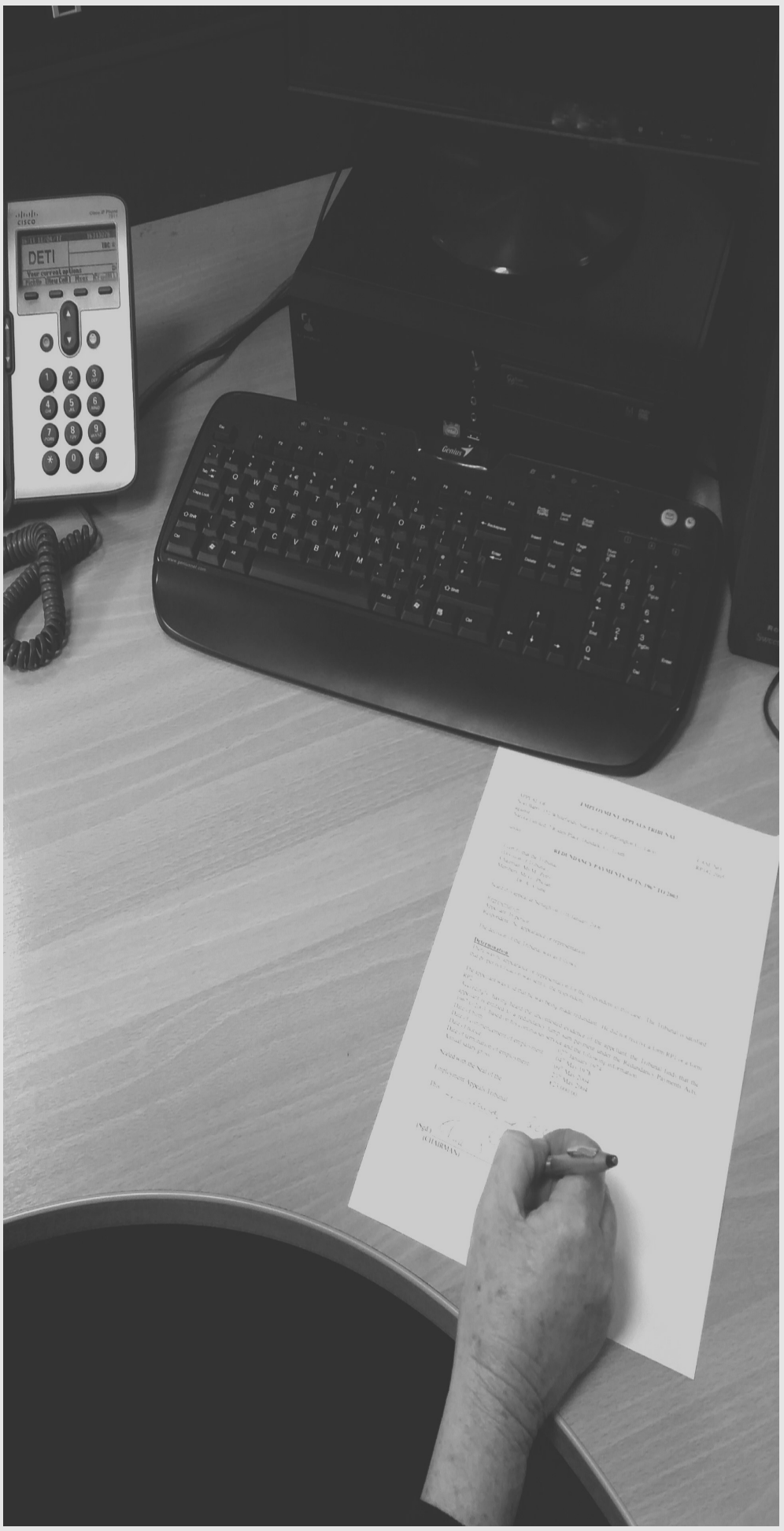
The Charter of Fundamental Rights of the European Union

1 Article 47 of the Charter provides:

"Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice. "



2 The European Convention on Human Rights

Article 6 provides:

In the determination of his civil rights and obligations... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be announced publicly...

The rights contained in the Convention are now part of Irish Law since the European Convention on Human Rights Act 2003

APPENDIX D

List of all Tribunal Members 1967 to date

CHAIRMEN	YEARS
John Gleeson SC	1968-1978
Maurice P Gaffney SC	1978-1985
Michael Moriarty SC	1985-1986
David Butler SC	1986-1989
Gerard Danaher BL	1990-1994
Mary Faherty BL	1994-2001
Kate T O'Mahony BL	2001-to date

VICE CHAIRMEN
John V Coleman SC
David L Montgomery BL
Francis Aylmer BL
Dermot MacCarthy SC
Donal Hamilton
Moya Quinlan
Sylvia Geraghty
Barry Hickson BL
Frank Nyhan
Dr John O Mahony BL
Frank Clarke BL
Michael Coghlan BL
Honor Desmond BL
Alison Lindsay BL
Ciaran O'Mara
Katherine Delahunt
Dermot McGuinness BL
Peter O'Leary BL
David Sheehan BL
Mary Faherty BL
Eamon Leahy BL
Michael Mulcahy BL
Iarfhlaith O'Neill SC
Andy O'Rorke
Paula Reid BL
Tom Ryan
Geri Silke BL
Michael Murphy BL
Rosario Boyle BL

Nuala Butler BL
Catherine Egan BL
Paul McGettigan BL
Una McGurk BL
Kate T O Mahony BL
Darina O'Sullivan BL
Patricia Ryan BL
Yvonne Murphy BL
Niall Beirne BL
Michael Howard BL
Kathryn Hutton BL
Conor Linehan BL
Pat McCartan
Patrick J McCarthy BL
Irene O'Higgins BL
Iseult O'Malley BL
Joe Revington BL
Carmel Stewart BL
Sarah Berkeley BL
Karen O'Driscoll BL
Brigid Reilly BL
Dermot Sheehan BL
Stephen Byrne BL
Niall Courtney
Dan Horan
Brid Mimnagh
Rosemary O'Connell
Conor Bowman BL
Gerard Brady
Anne Bunni BL

Dymphna Cusack BL
Emile Daly BL
Tony Halpin BL
Maureen Hareward BL
Elva Kearney BL
Declan McHugh BL
Michael Moloney BL
Ailbhe Burke
Triona Daly BL
Lisa McDonald
Paul McGarry BL
Penelope McGrath BL
Tommy Perkins
Jeremiah Sheedy
Dara Hayes BL
Margaret Levey BL
John Fahy BL
Kiernan Buckley
Fergal T Fitzgerald-Doyle BL
James Flanagan BL
Myles Gilvarry
Clodagh Gleeson BL
Bernadette Glynn
Patrick G Goold
Con Guiney
Kevin P Kilrane
Sean Mahon
Eoin Martin BL
Leachlain S Ó Catháin
Mark O'Connell BL

List of all Tribunal Members 1967 to date

VICE CHAIRMEN contd.
Thomas O'Donoghue
Marian Petty
Geraldine Small BL
Tom Wall
Sinead Behan BL
Olive Brennan BL
David Cagney BL
Pamela Clancy
William Benedict Garvey BL
Patrick Hurley
Desmond Mahon BL
Mary McAveety
Eamonn Murray
Niamh O Carroll Kelly BL
Jeremiah O'Connor
Rachel O'Flynn BL
Seán O'Riordáin BL
Pat Quinn BL
David Cagney BL
Saundra McNally
Tony Taaffe
Charles Corcoran BL
Dr Ann-Marie Courell BL
Fiona Crawford BL
Dorothy Donovan BL
Veronica Gates BL
Graham Hanlon
Eamonn Harrington
David Herlihy
James M Lucey
Orna Madden BL
Roderick Maguire BL
Jeananne McGovern BL
Nicholas Russell
Eithne Coughlan (County Registrar)
Patrick Meghen (County Registrar)
Fintan J Murphy (County Registrar)
Joseph Smith (County Registrar)
Patrick Wallace (County Registrar)

TRADE UNION PANEL
John Carroll
John Collins
Maurice P Cosgrave
James Cox
Timothy Keane
Patrick Murphy
Patrick Cardiff
John Cassidy
Paul Alexander
Francis O'Connor
Cornelius Donovan
Matthew Merrigan
Maura Breslin
John Mulhall
William Fitzpatrick
Sean Walsh
Michael Cleary
(Senator) Fintan Kennedy
George Keenan
Vincent Moran
Colm O'Donnell
Patrick O'Farrell
Brid Horan
George Lamon
Gerard Fleming
Noirin Greene
Ben Kearney
Anthony Kenneally
Thomas Murphy
Robert Rice
Margaret Walsh
Betty Dillon-Hall
Joseph Donnelly
Charles J Douglas
(Senator) Christopher Kirwin
Michael O Brien
Dr Clare O'Connor
Patrick O'Shaughnessy
William O'Shaughnessy
Edmund Browne
Gaye Cunningham
Mai O'Brien
Linda Tanham
Paul Clarke
Aidan McCormack

Lenore Mrkwicka
Michael McDermott
Seamus O'Donnell
Noel O'Neill
Rosaleen Glackin
Jerry Shanahan
Breda Fell
Phil Flynn
Patrick (Paddy) Woods
Michael McGarry
Eveta Brezina
Nick Broughall
Mary Burke
Anne Clune
Marie Corcoran
Eddie Cronin
Michael Crowe
James (Jim) Dorney
Sean Galavan
Phil Harrington
Michael Hayes
Nuala Keher
Tony Kenneally
Sam Nolan
Sean Redmond
Catherine Warnock
Alice Moore
John Kane
Ben Kearney
Mary Maher
Des Mahon
John McDonnell
Bernard McKenna
Kevin O'Connor
Tommy Perkins
Ciaran Ryan
Frank Barry
Rita Bergin
Brendan Byrne
George Hunter
Kay Garvey
Hilary Kelleher
Sean Mackell
Rita McArdle
Dominic McEvoy
Jim Moore

List of all Tribunal Members 1967 to date

TRADE UNION PANEL contd.
Owen Nulty
Emer O'Shea
Tom Wall
Catherine Byrne
Al Butler
Patsey Doyle
Mary Finnerty
Helen Henry
Rosabel Kerrigan
Joe Le Cumbre
Joe Maher
Peter McAleer
Phil Ní Sheaghdha
Paddy Trehy
Gerry Whyte
Marie Mulcahy
Tom Brady
Finbarr Dorgan
Noel Dowling
John Flannery
John Flavin
Tom J Gill
Thomas A Hogan
James Jordan
Frank Keoghan
Suzanne Kelly
Tony Kelly
Patrick King
Helen Murphy
Michael O'Reilly
Dave Thomas
Owen Wills

EMPLOYERS' PANEL
Christopher A Cusack LLD
Thomas Kearney
Myles O'Malley-O-Donohue (Captain)
Christopher O'Regan
Charles N Rabbitt BE
Arthur F Rice
Joseph Gaughan
Maurice J Johnston
John J Jennings
James P Ryan
Roland R Yates-Hale
John G Litton
Michael (Miceal) Willis Murphy FCA
Brian Cusack
James J O'Reilly
Callaghan McCarthy
Cyril J Midmer
James J Robertson
Joseph O Connor
Michael C Hennigan
Michael Coughlan
Patrick J Mullins
John Murphy
Patrick D McCann
James Quinn
Henry J. Baird
M.A. Fallon
John J. O'Leary
Luke O'Sullivan
Frank Stephens
Maurice Cowhey
J.P. Davis
Declan F. Winston
E.C. Corbett
Charles Harris
Maurice V. Joy
Pat Kennedy
Dan Neville
Richard Keating
Sean Cody
David Gannon
Richard Keenan
Desmond Morrison

Margaret O'Leary
Jas. A. Power
Edmund Sheehy
Patrick Bracken
Clare Carroll
Ann Delahunt
Anne Griffin
Paul O'Leary
Jim Redmond
Patrick Harrington
Mary Cromer
Michael Dunne
Carl Fay
T.P. (Moss) Flood
Michael Forde
Ben Kealy
Patrick McKeown
Billy (William) O'Carroll
Paul O'Grady
James O'Neill
C.A. (Neil) Ormond
Robert D E Prole
John Reid
Richard Gully
Tina Leonard
Gerry McAuliffe
William Power
Brian Aylward
Pat Casey
Mark McGrath
Joe Browne
William Brown
Frank Cunneen
Tom L Gill
James Goulding
John Guinan
Mel Kennedy
Cyril McHugh
Don Moore
Michael J. Murphy
Roger Murphy
Terence O'Donnell
Gerry Phelan
Pat Pierce
Peter J. Pierson
Eamonn Ryan

List of all Tribunal Members 1967 to date

EMPLOYERS' PANEL contd
Máire Sweeney
John Walsh
Angela Gaule
Eamonn C Handley
Don Hegarty
James Hennessy
John Horan
JJ Killian
Finbar Moloney
Michael Noone
Aidan O'Mara
Tadg O'Sullivan
Jean Winters
Liam Tobin
Gerry Andrews
Michael Carr
John G Flanagan
Con Lucey
Tom O'Grady
Dermot Peakin

SECRETARY
William O Shaughnessy
Joe Gavin
Dan Horan
Breda Cody
Dominic McBride
David Small
Frances Gaynor

APPENDIX E

CHAIRMEN OF THE TRIBUNAL 1967-2017

John Gleeson SC 1968-1978

John Gleeson was the first chairman of the Tribunal and presided over it during the first 10 years. During his time on the Tribunal he was considered to be 'the Tribunal'. He was highly respected and very popular with both the Department and those who came before the Tribunal. Under his leadership the Tribunal dealt with redundancy cases only and the hearings were quite informal. He later became Judge John Gleeson of the Circuit Court. It is no doubt that due to his contribution that the Tribunal flourished for 50 years. There is an enormous debt of gratitude due to him.

Maurice P Gaffney SC

1978-1985

Michael Moriarty SC 1985-1986

David Butler SC

1986-1989

Mary Faherty BL 1994-2001

Gerard Danaher BL

1990-1994

Kate T O'Mahony BL 2001-to date

APPENDIX F

Copy of the first Annual Report

AN BINSE ACHOMHAIRC IOMARCAIOCHTA

REDUNDANCY APPEALS TRIBUNAL

FIRST ANNUAL REPORT

For the Year Ended 31st December 1968

Submitted to the Minister for Labour in pursuance of Section 39(18) of the Redundancy Payments Act, 1967.

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FIRST ANNUAL REPORT OF THE REDUNDANCY APPEALS TRIBUNAL

1. The Redundancy Appeals Tribunal was established under the Redundancy Payments Act, 1967. This Act came into operation on 1st January, 1968. The Tribunal consists of a Chairman and three Vice-Chairmen with legal qualifications and a panel of twelve members, six nominated by the Irish Congress of Trade Unions and six by employers' organisations. The Tribunal ordinarily acts by division, each division consisting of either the Chairman or a Vice-Chairman and two members, one drawn from the employers' side of the panel and one from the trade union side.

2. The following members were appointed by the Minister for Labour for a period of three years commencing on 30th January, 1968 -

Chairman: John Gleeson, Solicitor

Vice-Chairmen: John V. Coleman, Barrister-at-law
David L. Montgomery, Barrister-at-law
Francis Aylmer, Barrister-at-law

Employers' Panel: Christopher A. Cusack, LL.D.,
Thomas Kearney, Myles O'Malley-O'Donohue (Captain),
Christopher O'Regan, Charles N. Rabbitt, B.E.,
Arthur F. Rice.

Trade Union Panel: John Carroll, John Collins,
Maurice P. Cosgrave, James Cox, Timothy Keane,
Patrick Murphy.

3. The purpose of the Tribunal is to determine matters of dispute arising under the Act. An employee, who is dissatisfied with a decision of his employer, or of a Deciding Officer appointed by the Minister in regard to his entitlement under the Act, or an employer who is dissatisfied with a decision of the Minister in regard to a claim for rebate or with a decision given by a Deciding Officer may have the matter referred to the Tribunal for decision.

4. The inaugural meeting of the members of the Tribunal was held on 22nd March, 1968 and the first appeal was heard on 18th April, 1968. Between that date and the 31st December, 1968, the Tribunal sat on 75 days and heard a total of 133 appeals. Eighty-three of these appeals were heard in Dublin and the remaining 50 at various other centres in the country.

5. Of the total number of appeals which came before the Tribunal, 113 were decided, 60 being allowed and 53 disallowed. Five appeals were withdrawn during hearings and 15 were adjourned for additional evidence. Thirty-six cases listed for hearing were withdrawn prior to coming before the Tribunal. The great majority of matters coming to the Tribunal were differences between employees and employers.

6. About 50% of the appeals referred to the Tribunal sought decisions on whether dismissal was due to redundancy. The remainder related to questions of

(a) whether the termination of the employment was a lay-off or a dismissal;

(b) whether in fact there was a dismissal;

(c) length of continuous service of employee;

(d) whether alternative employment offered by the employer was suitable in relation to the employee;

(e) whether notice pursuant to Section 11 of the Act was given;

(f) whether notice pursuant to Section 17 of the Act was given;

(g) amount of lump-sum payable;

(h) length of reckonable service;

(i) calculation of normal weekly remuneration;

(j) employers' entitlement to rebate;

(k) quantum of rebate;

(l) associated companies;

(m) whether or not a business was transferred from one person to another.

7. Decisions of the Tribunal are entered in a register of appeals which is open for inspection in the office of the Tribunal in the Department of Labour.

8. Employees who were concerned in appeals were represented at hearings of the Tribunal by trade union officials on 34 occasions and by the legal profession on 24 occasions. Employers were represented by officials of employers' associations at 22 hearings and by the legal profession at 30 hearings.

JOHN GLEESON
Chairman

6 February 1969

50 YEARS OF THE EMPLOYMENT APPEALS TRIBUNAL

50 YEARS OF THE EMPLOYMENT APPEALS TRIBUNAL

An Binse Achomhairc Fostaíochta
Employment Appeals Tribunal