



An Binse Achomhairc Fostaíochta
Employment Appeals Tribunal

AN BINSE ACHOMHAIRC FOSTAÍOCHTA

**THE EMPLOYMENT APPEALS
TRIBUNAL**

THIRTY-EIGHTH

ANNUAL REPORT

2005



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Employment Appeals Tribunal

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THIRTY-EIGHTH ANNUAL REPORT

2005

Submitted to the

Minister for Enterprise, Trade and Employment

in pursuance of

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



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

Dear Minister

I am pleased to submit the Annual Report of the Employment Appeals Tribunal for the year 2005 to you, in accordance with Section 39 (18) of the Redundancy Payments Acts 1967 to 2003. This is my third Report to you as Minister for Enterprise, Trade and Employment and my fifth 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 fourteen 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 their 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 can be added on to any of the aforementioned claims/complaint.

The Tribunal is also an appellate body, adjudicating on appeals from the recommendations or decisions of Rights Commissioners under twelve 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.

The effect of S.I. 630 of 2005, entitled the *European Communities (Protection of Employees (Employers' Insolvency)) Regulations 2005*, is that now all awards made by the Tribunal, in cases where an employer has been declared insolvent, can be paid out of the Social Insurance Fund. S.I. 77 of 2005, entitled the *Redundancy Payments Act 2003 (Commencement) Order 2005*, brought the provisions of the Redundancy Payments Act 2003 relating to notice to the Minister, the amount of lump sum, continuity of service and reckonable service into operation (Sections 7, 11 and 12 respectively).

Adjudicating on *unfair dismissal cases* is the core work of the Tribunal. This work represents approximately 95% of its workload in terms of the time spent at hearings. Unfair dismissal claims also impact most on workers and employers. The Tribunal disposed of an all-time high of 1,381 unfair dismissal cases in 2005, which was a slight increase from 1,363 in 2004. This is a very satisfactory result for the Tribunal in what is its most demanding and time-consuming work.

Legislative change in 2003 allowed claims for minimum notice claims, in circumstances where the employer has been declared insolvent, to be paid from the Social Insurance Fund without an order from the Tribunal. As a result, the number of such claims referred to the Tribunal has more than halved and has levelled off at over 1,000 claims per year, 1061 in 2004 and 1,035 in 2005. Though



significant in numbers this reduction has not benefited the Tribunal as these claims were/are listed in conjunction with other cases and generally dealt with in less than a minute.

The number of cases referred to the Tribunal in 2005 was 3,727, a difference of only 27 cases from the number of referrals in 2004. This levelling off is also evident in the number of unfair dismissal cases referred to the Tribunal over the period under review, 1414 cases were referred in 2005 which is a mere 5 cases less than in 2004.

It is notable that of the global figure of 3,727 cases referred to the Tribunal in the year under review 3,079 involve termination of employment disputes. If the claims for holiday pay, arising at the same time, are included, this number increases to 3,565 which represents 96% of all referrals. An even greater proportion of 98% of the 3,467 cases disposed of by the Tribunal in the same period arose on the termination of the employment relationship.

The gap between the number of unfair dismissal cases referred to the Tribunal and disposed of by the Tribunal each year over the last four years has decreased significantly and consistently each year from 341 in 2002 down to 37 in 2005.

Lost sitting days have been reduced from 125.5 in 2004 to 80.5 in 2005 (calculated on the basis of one division of the Tribunal). This was achieved by taking a stricter approach to the granting of postponements of hearings.

The Tribunal's policy is to provide an accessible, inexpensive, speedy, fair and informal forum for the speedy resolution of employment rights disputes. It is concerned at the backlog of cases waiting to be heard. While the average waiting period for hearings has remained around the same over 2004 and 2005 it has increased in a few areas outside Dublin. This is primarily a resource issue and is a carry-over from the immediately preceding years. The Tribunal has a sufficient number of members to reduce this backlog but the appointment of additional secretaries is required in order to increase the number of divisions that sit each day to clear this historical backlog.

The results of a customer quality survey, collated in January 2005, were welcomed by the Tribunal. The overall satisfaction rating with the service provided by the Tribunal was 100%, of which 70% were "satisfied" and 30% were "very satisfied". However, the Tribunal is not complacent and will continue in its endeavours to improve its service and address those aspects of its service which received a dissatisfaction rating, which where it arose were very low.

In 2005 the Tribunal created its own corporate image/logo. Work on the development of the Tribunal's website is at an advanced stage.

The Tribunal's internal review continued apace during 2005. The sub-committee working on administrative issues produced its Interim Report and its Final Report is nearing conclusion. The sub-committee working on legal issues also produced its Interim Report.



Two members represent the Tribunal on the Employment Rights Group which was set up following the issuing of the Report of the Review Group on the Functions of the Employment Rights Bodies.

The contribution of representatives of the Tribunal at two international conferences on unjustified/unfair dismissal has contributed to the Final Report on “*Termination of Employment at the Initiative of the Employer: the Challenge for Corporate Social Responsibility*” which was furnished to the European Commission in 2005.

Representatives of the Tribunal participated in a conference co-ordinated by the European Association of Labour Court Judges (of which the Tribunal is a member) on “*Corporate Re-Structuring- striking the balance between flexibility and employee protection*”.

The Tribunal was delighted to meet a group of visiting French judges *from École Nationale de la Magistrature* in June 2005 to discuss the Tribunal’s work and exchange views on our respective practices and procedures.

I thank you Minister Martin and Minister Killeen for your support. I look forward to your continuing support for the work of the Tribunal. I also thank the Department for its continuing support.

To the members of the Tribunal, who are all part-time members, I express my thanks for your commitment and dedication to the work of the Tribunal. A special word of thanks is due to you for the extra assistance and support you have given me during the year to ensure that the good work of the Tribunal continues. Your assistance and advices freely given have been invaluable and are greatly appreciated.

On behalf of the members and myself I want to say a special thank you to Dominic Mc Bride, Secretary to the Tribunal. We acknowledge and appreciate your initiative and contribution to the work of the Tribunal. Once again, I thank the staff of the Secretariat for their continued commitment to work of the Tribunal and for their unfailing courtesy to the users of the Tribunal and its members.

Kate T O’Mahony
Chairman



**THIRTY-EIGHTH ANNUAL REPORT OF
THE EMPLOYMENT APPEALS TRIBUNAL FOR YEAR ENDING
31ST DECEMBER 2005**

Section 1
Corporate Statement and Activities for 2005



Section 1: *Corporate Statement and Activities for 2005*

➤ *Our Mission Statement*

The Employment Appeals Tribunal is 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 goal that customers using the services of the Tribunal will be satisfied overall with the service they have received from the Tribunal.

➤ *Our Work*

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

The Tribunal was originally set up to adjudicate in disputes about redundancy between employees and employers and between employees or employers and the Minister for Labour (now Enterprise, Trade and Employment) or a Deciding Officer. The scope of the Tribunal was extended over the years and now, in addition to disputes under the **Redundancy Payments Acts, 1967 to 2003**, it also deals with disputes under the following legislation:

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



➤ *Composition of the Tribunal.*

The Tribunal consists of a Chairman and 31 Vice-Chairmen and a panel of 72 other members, thirty-six nominated by the Irish Congress of Trade Unions and thirty-six by organisations representative of employers. The Redundancy Payments Act, 1979 provides for the appointment of additional Vice-Chairmen and Members whenever the Minister for Enterprise, Trade and Employment is of the opinion that such appointments are necessary for the speedy dispatch of the business of the Tribunal.

The Tribunal acts in Divisions, each consisting of either the Chairman or a Vice-Chairman and two other members, one drawn from the employers' side of the panel and one from the trade union side. A Vice-Chairman of the Tribunal, when acting as Chairman (at the request of the Minister or the Chairman) has all the powers of the Chairman. 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 in *Section 3: Membership and Statistics* of this Report.

➤ *The Secretariat*

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

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

The Secretary to the Tribunal is Mr. Dominic McBride.



Tribunal's activities during 2005

➤ 2005 Statistics: An Overview

There were one thousand, one hundred and forty one (1,141) sittings of the Tribunal during 2005, which were held at forty-three (43) locations. Of these, five hundred and twenty seven (527) sittings took place in Dublin, and six hundred and fourteen (614) 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 2005, was 3,727. The Tribunal disposed of 3,467 claims during the year.

The average waiting period to have a claim heard was twenty-eight (28) weeks in Dublin, and was forty-one (41) weeks in provincial areas at year's end. While the Tribunal made every effort to list cases as quickly as possible, its efforts to reduce the backlog of cases waiting to be heard were constrained by the limited staffing resources assigned to the Tribunal.

Details relating to the work of the Tribunal in 2005, and the statistical data upon which this Report is based, are outlined in ***Section 2: Claims Referred and Disposed of by the Tribunal in 2005*** and in ***Section 3: Membership and Statistics***.

➤ Employment Review Group

Under Sustaining Progress the Government established a Review Group to consider the Role and Functions of the Employment Rights Bodies.

In response to the Report and Recommendations of the Review Group, and following the agreement of Government, the Minister for Labour Affairs, Mr. Tony Killeen T.D. established the Employment Review Group in May 2005. The Group will consider and advise on the operational implications of giving effect to the Government's Decision in the area of employment rights.

The Employment Review Group comprises representatives of the Department of Enterprise, Trade and Employment, the Social Partners, and the Employment Rights Bodies that is, the Employment Appeals Tribunal, the Labour Court, and the Labour Relations Commission.



➤ *Annual General Meeting*

The 2004 Annual General Meeting of the Tribunal took place in Dublin on 7th January 2005.

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

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

It is our goal that customers will be satisfied with the level of service they receive from the Tribunal. Comments may be sent to the Tribunal's Customer Services Manager, Employment Appeals Tribunal, Davitt House, 65a Adelaide Road, Dublin 2, or by email to: eat@entemp.ie

➤ *Information Technology: EAT Website and EAT Online Services*

In 2005, the Tribunal applied to the ICT Committee of the Department of Enterprise, Trade and Employment for funding towards the establishment of a dedicated, stand-alone website for the Tribunal. This funding was approved and following the tendering process Arekibo Communications was awarded the contract to design and build the Tribunal's website, work on which commenced in 2005. The Tribunal's website address is: www.eatribunal.ie

EATOS (the EAT online services) forms part of a three-stage information project, in which Phase 2 and Phase 3 on the development of an online service for the Tribunal's client base will commence in 2006.



➤ *Freedom of Information Act*

It is proposed to apply the Freedom of Information Act 1997 (as amended in 2003) to the Tribunal but the Statutory Instrument to give effect to this decision has not been drafted.

When applied, the Freedom of Information Act 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 Act, 1988 and 2003.

European links

The Tribunal fosters and continues to build upon the working relationship that already exists between it and those adjudicating on employment rights disputes in the Member States of the European Union.

➤ *European Association of Labour Court Judges*

Representatives from the Tribunal attended the annual conference of the European Association of Labour Court Judges in 2005. The conference took place in Luxembourg, from 24th-27th November 2005.

➤ *Visit from French Judges*

The Chairman and representatives of the Tribunal's three panels, i.e. representing the Vice-Chairmen and the Social Partners met with a group of French Judges on Friday, 24th June 2005.

The group, from *École Nationale de la Magistrature* (the French National Training School for Judges), was in Dublin to attend a conference on civil law. The group took the opportunity to meet with the Chairman and a representative group of the Members to discuss the Irish employment rights system in general, as well as discussing the work of the Tribunal in particular.

The group also attended a hearing of the Tribunal.



**THIRTY-EIGHTH ANNUAL REPORT OF
THE EMPLOYMENT APPEALS TRIBUNAL FOR YEAR ENDING
31ST DECEMBER 2005**

Section 2

Appeals and Claims Referred and Disposed of by the Tribunal in 2005



Appeals and Claims referred to the Tribunal During 2005

Legislation	2004	2005
	No.	No.
Minimum Notice and Terms of Employment Acts	1061	1035
Unfair Dismissals Acts (*includes 134 Appeals against Rights Commissioners' Recommendation)	1419	1414*
Redundancy Payments Acts	738	621
Protection of Employees (Employers' Insolvency) Acts	3	9
Maternity Protection Act	2	2
Payment of Wages Act (Appeals against Rights Commissioners' Decisions)	103	110
Terms of Employment (Information) Act (Appeals against Rights Commissioners' Recommendations)	20	28
Adoptive Leave Act (Appeals against Rights Commissioners' Recommendations)	-	-
Protection of Young Persons (Employment) Act (Appeals against Rights Commissioner's Recommendations)	-	-
Organisation of Working Time Act	396	486
Parental Leave Act (Appeals against Rights Commissioners' Decisions)	2	1
Protections for Person Reporting Child Abuse Act (Appeals against Rights Commissioners' Decisions)	-	-
European Communities (Protection of Employees' Rights on Transfer of Undertakings) Regulations, 2003 (Appeals against Rights Commissioners' Decisions)	9	21
European Communities (Protection of Employment) Regulations, 2000 (Appeals against Rights Commissioners' Decisions)	1	-
Carer's Leave Act (Appeals against Rights Commissioners' Decisions)	-	-
Competition Act, 2002	-	-
TOTAL	3,754	3,727



REDUNDANCY PAYMENTS ACTS 1967 TO 2003

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

Of the **637** claims disposed of **200** were allowed, **99** were dismissed, **128** were withdrawn during hearing and **210** were withdrawn prior to hearing.

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS 1973 To 2001

In 2003 the Protection of Employees (Employers' Insolvency) Acts 1984 and 2001 were amended to allow claims for statutory notice entitlements, where the employer is insolvent, to be made directly to the Insolvency Payments Unit of the Department of Enterprise, Trade and Employment, for payment from the Social Insurance Fund, without recourse to the Tribunal.

Of the **976** claims disposed of under the Minimum Notice and Terms of Employment Acts **203** were allowed, **119** were dismissed, **326** were withdrawn during hearing and **328** were withdrawn prior to hearing.

UNFAIR DISMISSALS ACTS, 1977 To 2001

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



The effect of an amendment to the Unfair Dismissals Act 1977 made by the Equality Act 2004 is that a person over 66 years of age on the date of dismissal is no longer excluded from the operation of the Acts unless that person has already reached the normal retiring age for employees of the same employer in similar employment. Under a further amendment made to the Act of 1977 by the Health Act 2004 only the chief executive officer of the Health Service is excluded from the benefit of the Unfair Dismissals Acts.

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

Outcome of Claims and Appeals under the Unfair Dismissals Acts

Direct Claims

Of the total of **1,267** claims disposed of **163** were allowed, **160** were dismissed, **507** were withdrawn during hearing and **437** were withdrawn prior to hearing.

Appeals against Recommendations of Rights Commissioners

Of the **76** appeals against the Recommendations of Rights Commissioners disposed of by the Tribunal **17** were upheld, **2** were upset, **7** were varied and **50** were withdrawn.

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

Of the **38** claims disposed of by the Tribunal **16** were upheld, **1** was upset and **21** were withdrawn.

Forms of Redress

The Tribunal awarded compensation amounting to **€1,775,975.60** in **196** cases. The average compensation awarded by the Tribunal was **€9,061.10**. Re-instatement was ordered in **3** cases and



re-engagement was ordered in **2** cases. The distribution of compensation awarded by the Tribunal is shown in **Annexe 2**.

MATERNITY PROTECTION ACT 1994

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

2 cases were appealed to the Tribunal in 2005. One (**1**) case was disposed of.

PROTECTION OF EMPLOYEES (EMPLOYERS' INSOLVENCY) ACTS

1984 to 2001

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

The European Communities (Protection of Employees (Employers' Insolvency)) Regulations 2005, S.I.630 of 2005 has extended the Insolvency Payments Scheme to include all awards made by the Tribunal¹. This Statutory Instrument also extends cover to employees who are employed in Ireland by an employer who has become insolvent under the laws, regulations and administrative procedures of another Member State.

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

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



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.

Of the **64** appeals disposed of by the Tribunal **20** were upheld, **3** were upset, **7** were varied and **34** were withdrawn.

TERMS OF EMPLOYMENT (INFORMATION) ACT 1994 AND 2001

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

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

Outcome of Appeals

Of the **11** appeals disposed of by the Tribunal **2** were upheld, **0** were upset, **2** were varied and **7** were withdrawn.

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

Of the **10** claims disposed of by the Tribunal **6** were upheld, **0** were upset and **4** were withdrawn.



ADOPTIVE LEAVE ACT 1995

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

There were no appeals to the Tribunal during the year ending 31st December 2005.

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 2005.

ORGANISATION OF WORKING TIME ACT 1997

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



There were **381** claims disposed of by the Tribunal during the year ending 31st December 2005. Of these **43** were allowed, **54** were dismissed, **144** were withdrawn during hearing and **140** were withdrawn prior to hearing.

PARENTAL LEAVE ACT 1998

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

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

The Tribunal disposed of **3** appeals in 2005. **1** was upheld, **1** was upset and **1** was withdrawn.

PROTECTIONS FOR PERSONS REPORTING CHILD ABUSE ACT 1998

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

There were no appeals to the Tribunal during the year ending 31st December 2005.



EUROPEAN COMMUNITIES (PROTECTION OF EMPLOYMENT) REGULATIONS 2000

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

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

There were no appeals either referred to, or disposed of by the Tribunal during the year ending 31st December 2005.

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

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

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

21 appeals were referred to the Tribunal during the year ending 31st December 2005. There were no appeals disposed of during the year ending 31st December 2005.



CARER'S LEAVE ACT 2001

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

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

There were no appeals to the Tribunal during the year ending 31st December 2005.

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 of complaint to a Rights Commissioner and an appeal lies to the Employment Appeals Tribunal.

There were no appeals to the Tribunal during the year ending 31st December 2005.

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

The average waiting period for a case to come for hearing before the Tribunal was approximately **28** weeks in Dublin and **41** weeks in provincial areas.



APPEALS TO HIGHER COURTS

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

In 2005, the Tribunal was notified that **14** cases were appealed to the High Court under the Redundancy Payments Acts 1967-2003 (**10**) and the Payment of Wages Act 1991 (**4**).

There is no information available on the outcome of these appeals.

APPEALS TO CIRCUIT COURTS

The regulations provide a means for the Tribunal to be informed of the referral and result of cases appealed to the Circuit Courts. The Tribunal notes that under the regulations it was informed directly that only **85** determinations of the Tribunal in unfair dismissals cases were referred on appeal to the Circuit Courts in 2005.

Based upon information forwarded by the Circuit Courts, however, the Tribunal understands that **119** determinations of the Tribunal in unfair dismissals cases were appealed to the Circuit Courts in 2005. From the information submitted by the Circuit Court offices in respect of **47** of these cases, **0** were upset, **12** were upheld, **6** were struck out, **4** were withdrawn, **5** were adjourned and **20** were pending.

Of the remaining **72** cases, no information is available.



NUMBER OF TRIBUNAL SITTINGS

During the year under review, Divisions of the Tribunal sat on **229** days at **43** different venues throughout the country. On **228** of these days, **2** or more Divisions of the Tribunal sat. The total number of sittings was **1,141** (**527** in Dublin and **614** in the Provinces). The number of sittings at each venue varied from a single sitting at a number of venues in the Provinces to **527** 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 2005 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 the hearing date.

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 2005 the total number of postponement applications was **255**. There were **80.5** lost sittings days of divisions due to postponements in 2005.

REPRESENTATION AT HEARINGS

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



The total number of cases heard by the Tribunal under the various Acts or combination of Acts in 2005 where the parties had representation was **1253**:

- **989** employee parties (**78.93%**) were represented (**223** by trade unions, **655** by legal representation and **111** by other persons).
- **818** employer parties (**65.28%**) were represented (**53** by employers' associations, **585** legal representation and **180** by other persons).

The total number of cases heard by the Tribunal under the Unfair Dismissals Acts, 1977 to 2001 where the parties had representation was **911**:

- **769** employee parties (**84.41%**) were represented (**126** by trade unions, **586** by legal representation and **57** by other persons).
- **655** employer parties (**71.9%**) were represented (**44** by employers' associations, **488** by legal representation and **123** by other persons).

Kate T. O'Mahony

Chairman



**THIRTY-EIGHTH ANNUAL REPORT OF
THE EMPLOYMENT APPEALS TRIBUNAL FOR YEAR ENDING
31ST DECEMBER 2005**

Section 3
Membership and Statistics



APPENDICES

- ANNEXE 1** Membership of the Tribunal at 31st December 2005.
- ANNEXE 1(A)** Summary of Claims Referred to the Tribunal in 2005 and the Outcome of the Claims Disposed of in 2005.
- ANNEXE 1(B)** Summary of Appeals against the Recommendations of Rights Commissioners Referred to the Tribunal in 2005 and the Outcome of the Appeals disposed of in 2005.
- ANNEXE 1(C)** Summary of claims for implementation Referred and Disposed of in 2005 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 2005.
- ANNEXE 1(E)** Average waiting period between date of receipt and date of hearing of cases in 2003, 2004 and 2005 with comparative figures of Tribunal's workload in the same period.
- ANNEXE 2** Distribution of Compensation awarded by the Tribunal in Determinations of Unfair Dismissal in 2005.
- ANNEXE 3(A)** Number of Sittings of the Tribunal at the Various Venues in 2005.
- ANNEXE 3(B)** Particulars of Tribunal sittings in 2005.



**The Membership of the Employment Appeals Tribunal
on 31st December, 2005**

Chairman:

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

Vice-Chairmen:

Kieran Buckley, Solicitor
Dympna Cusack, Barrister-at-Law
Emile Daly, Barrister-at-Law
Catherine Egan, Barrister-at-Law
John Fahy, Barrister-at-Law
Fergal T. Fitzgerald-Doyle, Barrister-at-Law
James Flanagan, Barrister-at-Law
Myles Gilvarry, Solicitor
Clodagh Gleeson, Barrister-at-Law
Bernadette Glynn, Solicitor
Patrick G. Goold, Solicitor
Con Guiney, Barrister-at-Law
Tony Halpin, Barrister-at-Law
Dara Hayes, Barrister-at-Law
Elva Kearney, Barrister-at-Law
Kevin P. Kilrane, Solicitor
Margaret Levey, Barrister-at-Law
Dermot MacCarthy, Senior Counsel
Sean Mahon, Solicitor
Eoin Martin, Barrister-at-Law
Penelope McGrath, Barrister-at-Law
Leachlain S. Ó Catháin, Solicitor
Mark O'Connell, Barrister-at-Law
Thomas O'Donoghue, Solicitor
Peter J. O'Leary, Barrister-at-Law
Marian Petty, Solicitor
Moya Quinlan, Solicitor
Joe Revington, Senior Counsel



Tom Ryan, Solicitor
Jeremiah Sheedy, Solicitor
Geraldine Small, Barrister-at-Law

Employers Panel:

Patrick Bracken, Joe Browne, William Brown,
Pat Casey, Frank Cunneen, Anne Delahunt,
T. P. Flood, Michael Forde, Tom Gill,
James Goulding, John Guinan, Richard Keating,
Ben Kealy, Mel Kennedy, Gerry McAuliffe,
Cyril McHugh, Don Moore, Desmond Morrison,
Michael J. Murphy, Roger Murphy, Terence O'Donnell,
Paul O'Leary, James O'Neill, C. A. Ormond,
Gerry Phelan, Pat Pierce, Peter Pierson,
Jas. A. Power, William Power, Robert Prole,
Jim Redmond, John Reid, Eamonn Ryan,
Máire Sweeney, John Walsh, Declan Winston.

Employees Panel:

Frank Barry, Rita Bergin, Eveta Brezina,
Nick Broughall, Brendan Byrne, Paul Clarke,
Anne Clune, Jim Dorney, Breda Fell,
Kay Garvey, Noirin Greene, George Hunter,
Ben Kearney, Hilary Kelleher, Tony Kennelly,
George Lamon, Sean Mackell, Mary Maher
Des Mahon, Rita McArdle, John McDonnell,
Dominic McEvoy, Michael McGarry, Bernard McKenna,
Alice Moore, Jim Moore, Sam Nolan,
Owen Nulty, Clare O'Connor, Kevin O'Connor,
Seamus O'Donnell, Emer O'Shea, Ciaran Ryan,
Catherine Warnock, Patrick Woods, Tom Wall.

Secretary:

Dominic McBride