



An Binse Achomhairc Fostaíochta
Employment Appeals Tribunal

AN BINSE ACHOMHAIRC FOSTAÍOCHTA

**THE EMPLOYMENT APPEALS
TRIBUNAL**

THIRTY- NINTH

ANNUAL REPORT

2006



AN BINSE ACHOMHAIRC FOSTAÍOCHTA

THE EMPLOYMENT APPEALS TRIBUNAL

THIRTY-NINTH ANNUAL REPORT

2006

Submitted to the

Minister for Enterprise, Trade and Employment

in pursuance of

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



CONTENTS	PAGE
Chairman’s Submission to Mr. Micheál Martin, Minister for Enterprise, Trade and Employment	1
Section 1: Corporate Statement and Activities for 2006	5
Section 2: Appeals and Claims Referred and Disposed of by the Tribunal in 2006	13
<i>Redundancy Payments Acts 1967 to 2003</i>	15
<i>Minimum Notice and Terms of Employment Acts 1973 to 2001</i>	15
<i>Unfair Dismissals Acts, 1977 To 2001</i>	15
<i>Maternity Protection Act 1994</i>	17
<i>Protection of Employees (Employers' Insolvency) Acts 1984 to 2001</i>	17
<i>Payment of Wages Act 1991</i>	18
<i>Terms of Employment (Information) Act 1994 and 2001</i>	18
<i>Adoptive Leave Act 1995</i>	19
<i>Protection of Young Persons (Employment) Act 1996</i>	19
<i>Organisation of Working Time Act 1997</i>	19
<i>Parental Leave Act 1998</i>	20
<i>Protections For Persons Reporting Child Abuse Act 1998</i>	20
<i>European Communities (Protection of Employment) Regulations 2000</i>	21
<i>European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003</i>	21
<i>Carer’s Leave Act 2001</i>	22
<i>Competition Act 2002</i>	22
<i>Civil Service Regulation (Amendment) Act, 2005</i>	22
<i>Average Waiting Period for Unfair Dismissal Cases to Come for Hearing to the Tribunal</i>	23
<i>Appeals to Higher Courts</i>	23
<i>Appeals to Circuit Courts</i>	23
<i>Number of Tribunal Sittings</i>	24
<i>Number of Postponements</i>	24
<i>Representation at Hearings</i>	24
Section 3: Membership and Statistics	26



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 2006 to you, in accordance with Section 39 (18) of the Redundancy Payments Acts 1967 to 2003. This is my fourth Report to you as Minister for Enterprise, Trade and Employment and my sixth 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 *Parental Leave (Amendment) Act 2006* makes significant amendments to the *Parental Leave (Amendment) Act 1998*. The *Civil Service Regulation (Amendment Act) 2005* amends the *Unfair Dismissal Act 1977* and the *Minimum Notice and Terms of Employment Act 1973* to extend the protections of those Acts to certain civil servants. These amendments came into effect on 4 July 2006. *Social Welfare (Consolidated Payments Provisions) (amendment) (No.8) (Carers and Homemakers) Regulations 2006, S.I. No.288 of 2006*, which came into effect on 1 June 2006, amends the earlier regulations.

In 2006, the number of cases referred to the Tribunal was 3,480 and the number disposed of was 3,169. This was a very satisfactory result for the Tribunal in a year, where due to the ending of the term of the current membership, the Tribunal was not in a position to list new work for a period of almost three months.



The number of appeals from the Recommendations and Decisions of Rights Commissioners referred to the Tribunal rose to a high of 367 in 2006 from 296 in 2005, which is an increase of 24%.

Adjudicating on *unfair dismissal cases* continues to account for approximately 95% of the Tribunal's workload in terms of the time spent at hearings. The number of unfair dismissal cases referred to the Tribunal in 2006 and the number disposed of was 1171 which is 123 cases less than last year and again the change-over of the membership is a factor in this result.

Lost sitting days were reduced from 125.5 in 2004 to 80.5 in 2005 to 66.5 in 2006 (calculated on the basis of one division of the Tribunal), which represents almost a halving of lost days over the two-year period.

The Tribunal's policy is to provide an accessible, inexpensive, speedy, fair and informal forum for the speedy resolution of employment rights disputes. The Tribunal remains concerned at the backlog of cases waiting to be heard. While the average waiting period for hearings had slightly decreased in Dublin it has increased to an unacceptable level in areas outside Dublin. As the term of membership expired at the end of January 2007 the Tribunal was unable to list new cases for a period of almost three months. As a result of this the good work done by the Tribunal earlier in the year in targeting the areas with the highest backlog has been undone. The backlog is primarily a resource issue and in the main is a carry-over from the immediately preceding years. The Tribunal has a sufficient number of members to reduce the backlog but the appointment of additional secretaries is critical to enable the Tribunal to end the delay.

The year 2006 was an historical one for the Tribunal on a number of levels. The Tribunal held its Annual General Meeting outside Dublin, in Ennis, for the first time ever.

The Tribunal developed its stand-alone website. We were very pleased that Minister Killeen launched our website on 3rd April 2006. There were 1.96million hits on the website from the date of its launch to the end of 2006 which shows a high level of interest in the Tribunal. Further developments of our website are on the way in 2007.

The Tribunal established its corporate image and identity. Its new corporate logo now appears on its website, and on all stationery.

Pursuant to the recommendation of the Review Group on the Functions of the Employment Rights Bodies, the Tribunal set up its Internal Working Group to address the issues identified in the submissions made to the Review Group.

The Tribunal's working group completed an in-depth review on the service it provides to the parties who use the Tribunal. There was particular focus on the procedures for hearing cases. The review resulted in three publications: "*Report of the working group of the Employment Appeals Tribunal*", "*Guide for Members of the Tribunal*" and "*Guidelines for Employees, Employers and Practitioners appearing before the Tribunal*".



As part of its review the Internal Review Group also reviewed and updated, where necessary, the forms used by parties, when lodging either a claim or appeal to the Tribunal.

The Tribunal was invited to become a member of the Forum of Chairpersons of State Sponsored Bodies. There is a North-South dimension to this Forum and the Tribunal participating in the first North-South Conference on 'Developing Cross-Border Relationships'. The Head of the Northern Ireland Civil Service and the Secretary General to the Irish Government addressed the Conference. The Conference dealt with co-operation between public agencies north and south and the valued added by such co-operation.

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. Under the auspices of the European Association of Labour Court Judges, the Tribunal participated in a delegation of Senior Labour Court Judges to the Peoples' Republic of China. The members of the delegation were guests of the Chinese Ministry of Labour and Social Services, Renmin University of Beijing and North-West University in Xian. The function of the visit was to explain the rich variety of European solutions to labour dispute resolution in order to assist them in amending their own legislation. The seminars took place in Beijing and Xian from 24th June to 2nd July 2006.

The Tribunal was also represented at the Annual General Meeting of the European Association of Labour Court Judge in Paris on 3rd September 2006.

In June 2006 a group representative of the Tribunal met with a group of German corporate lawyers who wished to learn about Irish employment rights system and the work of the Tribunal in order to enable them to advise their clients about Ireland as a possible location for investment.

I thank you Minister Micheál Martin and Minister Tony 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.

A very special thanks to the members of the Tribunal for their good work during the course of the term just ended. I express my thanks for your commitment and dedication to the work of the Tribunal. Your assistance and advices freely given were an invaluable resource and greatly appreciated.

On behalf of the Tribunal, I want to say a special word of thanks to Dominic Mc Bride, Secretary to the Tribunal, and to all in the Secretariat. 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 the work of the Tribunal and for their unfailing courtesy and helpfulness to the users of the Tribunal and its members.


Kate T O'Mahony
Chairman



An Binnse Achomhairc Fostaíochta
Employment Appeals Tribunal

**THIRTY-NINTH ANNUAL REPORT OF
THE EMPLOYMENT APPEALS TRIBUNAL FOR YEAR ENDING
31ST DECEMBER 2006**

Section 1
Corporate Statement and Activities for 2006



Section 1: Corporate Statement and Activities for 2006

➤ *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 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 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 2006

➤ 2006 Statistics: An Overview

There were one thousand and sixty-two (1,062) sittings of the Tribunal during 2006, which were held at thirty-six (36) locations. Of these, five hundred and seventeen (517) sittings took place in Dublin, and five hundred and forty five (545) sittings were held in provincial areas.

The total number of claims referred to the Tribunal either directly, or an appeal from recommendations and decisions of the Rights' Commissioner Service, in 2006, was 3,480. The Tribunal disposed of a total of 3,169 claims and appeals during the year.

The annual average waiting period to have a claim heard was 27 weeks in Dublin, and 44 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 2006, and the statistical data upon which this Report is based are outlined in ***Section 2: Claims Referred and Disposed of by the Tribunal in 2006*** and in ***Section 3: Membership and Statistics***.

➤ Customer Service and Charter

The Tribunal is committed to quality customer service, and to deliver a service that is both effective and efficient, and which at all times is provided in a courteous manner and with the minimum of delay. The Tribunal respects the rights of all parties to a claim. A description of the services provided by the Tribunal and how to avail of them, the contact points for them, relevant publications and frequently asked questions are all available on the website at www.eatribunal.ie. An information booklet on the Tribunal, as well as ***Guidelines for Practitioners appearing before the Tribunal*** are available free of charge from the Tribunal Secretariat, as well as the Information Unit, Department of Enterprise, Trade and Employment. These booklets are issued to all parties to unfair dismissal disputes prior to hearings. The



Tribunal has updated the latter booklet, in line with the recommendations set out in the Final Report of the Tribunal's Internal Review Group.

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

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

Service Improvements introduced by the EAT during 2006

➤ EAT Internal Review; and the Employment Review Group

During 2004, the Tribunal established an internal Review Group to consider best practice in improving the service it provides to its client base. The Group reported to the overall membership during its deliberations, which culminated in the presentation of the Final Report in April 2006. The Review Group identified a range of areas where improvements could be made to the Tribunal's services. These included:

- One Stop Shop Proposal,
- Tribunal Forms,
- Postponements/Adjournments for new and resumed cases,
- Resumed Hearings,
- Listing of cases,
- Format of hearing rooms,
- Applications for witness summonses and production of documents,
- Issuing of determinations,
- Training,
- Mediation,
- Legalism,
- Legislation: re-drafting regulations and changes in Statutory Instruments,
- Code of Practice for Tribunal Members,
- Helpful instructions for taking and running cases at the EAT.



Apart from its own internal review, the Tribunal also participated in the Employment Review Group that was established by the Government under Sustaining Progress. This group was made up of representatives of the Department of Enterprise, Trade and Employment, the social partners, and the Employment Rights Bodies (the **Employment Appeals Tribunal**, the Labour Court, and the Labour Relations Commission).

➤ ***EAT Questionnaire***

The Tribunal conducted a questionnaire of its clients and customers. The results indicated that there was a significantly high level of satisfaction with the services provided by the Tribunal.

➤ ***Corporate identity and logo***

The Tribunal established its corporate image and identity, in producing a new corporate logo, which appears on the website and on all stationery.

➤ ***Forms***

The forms used by claimants and/or respondents, when lodging either a claim, or appeal, to the Tribunal have been reviewed and updated, where necessary.

➤ ***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 yet 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*

Under the auspices of the European Association of Labour Court Judges, the Chairman of the Employment Appeals Tribunal travelled with a delegation of Senior Labour Court Judges to the Peoples' Republic of China. The members of the delegation were guests of the Chinese Ministry of Labour and Social Services, Renmin University of Beijing and North-West University in Xian. The function of the visit was to explain the rich variety of European solutions to labour dispute resolution in order to assist China in amending its own legislation. The seminars took place in Beijing and Xian from 24th June to 2nd July 2006.

The Chairman also attended the Annual General Meeting of the European Association of Labour Court Judges in Paris, on 3rd September 2006.

Other Contacts

➤ *Visit from German Lawyers' group.*

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 German corporate lawyers on Thursday, 15th June 2006.

The group was in Dublin with a view to advising their clients on Ireland as a location for future investment. 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.

➤ *"School's Out: Learning in the Workplace"*

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



In line with its customer service initiatives, in 2006, the Tribunal welcomed visits from students from various educational establishments, under the auspices of its pilot programme entitled *“School’s Out: Learning in the Workplace”*. This project is aimed primarily at students in 2nd and 3rd level educational establishments, to educate and inform them on the importance of employment rights in Ireland. It gives students an opportunity to visit the Tribunal and to experience, at first hand, the procedures of the Tribunal. The programme has received very favourable comments and feedback from the various groups that visited the Tribunal during the year.

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

Annual General Meeting

The 2005 Annual General Meeting of the Tribunal took place in Ennis, Co. Clare on 3rd April 2006. Minister Killeen attended and, on behalf of the Tribunal, launched its new dedicated, stand-alone website, which is reported upon below.

Information Technology: EAT Website and EAT-online services in 2006.

As reported in the Tribunal’s Annual Report 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. 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 late 2005 and concluded in early 2006. There were 1.96m hits on the website between its launch date on 3rd April to 31st December 2006, which is a very favourable outcome over the nine months of its operation.



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

EATOS – the EAT online services - forms part of the Tribunal's ongoing Information project, Phase 2 of which – **eDecisions** – came under consideration in late 2006, and which is ongoing.



An Binnse Achomhairc Fostaíochta
Employment Appeals Tribunal

**THIRTY-NINTH ANNUAL REPORT OF
THE EMPLOYMENT APPEALS TRIBUNAL FOR YEAR ENDING
31ST DECEMBER 2006**

Section 2: Appeals and Claims Referred and Disposed of by the Tribunal in 2006



Appeals and Claims referred to the Tribunal During 2006

Legislation	2005 No.	2006 No.
Minimum Notice and Terms of Employment Acts	1035	858
Unfair Dismissals Acts (*This figure includes 124 Appeals against Rights Commissioners' Recommendation)	1414	1291*
Redundancy Payments Acts	621	680
Protection of Employees (Employers' Insolvency) Acts	9	5
Maternity Protection Act	2	-
Payment of Wages Act (Appeals against Rights Commissioners' Decisions)	110	101
Terms of Employment (Information) Act (Appeals against Rights Commissioners' Recommendations)	28	42
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	486	403
Parental Leave Act (Appeals against Rights Commissioners' Decisions)	1	4
Protections for Person Reporting Child Abuse Act (Appeals against Rights Commissioners' Decisions)	-	-
European Communities (Protection of Employees on Transfer of Undertakings) Regulations, 2003 (Appeals against Rights Commissioners' Decisions)	21	95
European Communities (Protection of Employment) Regulations, 2000 (Appeals against Rights Commissioners' Decisions)	-	1
Carer's Leave Act (Appeals against Rights Commissioners' Decisions)	-	-
Competition Act, 2002	-	-
Civil Service Regulation (Amendment) Act, 2005	-	-
TOTAL	3,727	3,480



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 **585** claims disposed of **205** were allowed, **81** were dismissed, **106** were withdrawn during hearing and **193** were withdrawn prior to hearing.

Minimum Notice and Terms of Employment Acts 1973 to 2001

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

Of the **833** claims disposed of under the Minimum Notice and Terms of Employment Acts **206** were allowed, **164** were dismissed, **242** were withdrawn during hearing and **221** were withdrawn prior to hearing.

Unfair Dismissals Acts, 1977 To 2001

The Unfair Dismissals Act, 1977 was a major development in Irish employment law. It provides remedies for employees who are found by the Tribunal to have been unfairly dismissed from their employment. The remedies under the Act are: re-instatement, re-engagement or compensation up to a maximum of 104 weeks' remuneration. Claims for unfair



dismissal may be initiated with the Tribunal or with a Rights Commissioner. A claim under this Act may only be brought to the Tribunal if one of the parties objects in writing to a Rights Commissioner hearing the claim.

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

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

Outcome of Claims and Appeals under the Unfair Dismissals Acts

Direct Claims

Of the total of **1,066** claims disposed of **170** were allowed, **206** were dismissed, **379** were withdrawn during hearing and **311** were withdrawn prior to hearing.

Appeals against Recommendations of Rights Commissioners

Of the **72** appeals against the Recommendations of Rights Commissioners disposed of by the Tribunal **16** were upheld, **13** were upset, **8** were varied and **35** were withdrawn.

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

Of the **33** claims disposed of by the Tribunal **20** were upheld and **13** were withdrawn.

Forms of Redress

The Tribunal awarded compensation amounting to **€2,627,003.56** in **221** cases. The average compensation awarded by the Tribunal was **€11,886.89**. Re-instatement was ordered in **2** cases



and re-engagement was ordered in **5** 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.

There were no appeals to the Tribunal in 2006. Three (**3**) cases were 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. No.630 of 2005), has extended the Insolvency Payments Scheme to include all awards made by the Tribunal¹. This statutory instrument also extends cover to employees who are employed in Ireland by an employer who has become insolvent under the laws, regulations and administrative procedures of another member state.

4 complaints were disposed of, and of these **1** was allowed and **3** were 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 **88** appeals disposed of by the Tribunal **34** were upheld, **13** 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 **37** appeals disposed of by the Tribunal **5** were upheld, **3** were upset, **2** were varied and **27** were withdrawn.

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

Of the **26** claims disposed of by the Tribunal **4** were upheld and **0** were upset and **22** 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 2006.

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 2006.

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 **420** claims disposed of by the Tribunal during the year ending 31st December 2006. Of these **92** were allowed, **83** were dismissed, **146** were withdrawn during hearing and **99** 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.

There were no appeals to the Tribunal during the year ending 31st December 2006.

The Tribunal disposed of 2 appeals in 2006, of which 1 was upheld 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 2006.



European Communities (Protection of Employment) Regulations 2000

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

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

1 appeal was referred to the Tribunal during the year ending 31st December 2006. There were no appeals disposed of by the Tribunal for the period under review.

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

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

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



95 appeals were referred to the Tribunal during the year ending 31st December 2006. There were no appeals disposed of during the period under review.

Carer's Leave Act 2001

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

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

There were no appeals to the Tribunal during the year ending 31st December 2006.

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 2006.

Civil Service Regulation (Amendment) Act, 2005

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



Average Waiting Period for Unfair Dismissal Cases to Come for Hearing to the Tribunal

The annual average waiting period for a case to come for hearing before the Tribunal was approximately **27 weeks** in Dublin and **44 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 2006, the Tribunal was notified that **5** cases were appealed under judicial review proceedings to the High Court. No information is 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 **63** determinations of the Tribunal in unfair dismissals cases were referred on appeal to the Circuit Courts in 2006.

Based upon information forwarded by the Circuit Courts, however, the Tribunal understands that **79** determinations of the Tribunal in unfair dismissals cases were appealed to the Circuit Courts in 2006. From the information submitted by the Circuit Court offices in respect of **54** of these cases, **12** were upheld, **2** were varied, **10** were struck out, **8** were not determined, **3** were withdrawn, and **19** were pending.

No information is available in respect of the remaining **25** cases.



Number of Tribunal Sittings

During the year under review, Divisions of the Tribunal sat on **229** days at **36** different venues throughout the country. On **228** of these days, **2** or more Divisions of the Tribunal sat. The total number of sittings was **1,062** (**517** in Dublin and **545** in the Provinces). The number of sittings at each venue varied from a single sitting at a number of venues in the Provinces to **517** 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 2006 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.

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 2006, the total number of postponement applications was **332** of which **209** were granted. There were **66.5** lost sittings days of divisions due to postponements in 2006.

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 2006 where the parties had representation was 1,012.

- **1050** employee parties were represented (**273** by trade unions, **641** by legal representation and **136** by other persons).
- **826** employer parties were represented (**55** by employers' associations, **574** by legal representation and **197** 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 687.

- **736** employee parties were represented (**137** by trade unions, **524** by legal representation and **75** by other persons).
- **650** employer parties were represented (**48** by employers' associations, **460** by legal representation and **142** by other persons).

Kate T. O'Mahony

Chairman



**THIRTY-NINTH ANNUAL REPORT OF
THE EMPLOYMENT APPEALS TRIBUNAL FOR YEAR ENDING
31ST DECEMBER 2006**

Section 3: Membership and Statistics



APPENDICES

- ANNEXE 1** Membership of the Tribunal at 31st December 2006.
- ANNEXE 1(A)** Summary of Claims Referred to the Tribunal in 2006 and the Outcome of the Claims Disposed of in 2006.
- ANNEXE 1(B)** Summary of Appeals against the Recommendations of Rights Commissioners Referred to the Tribunal in 2006 and the Outcome of the Appeals disposed of in 2006
- ANNEXE 1(C)** Summary of claims for implementation Referred and Disposed of in 2006 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 2006.
- ANNEXE 1(E)** Average waiting period between date of receipt and date of hearing of cases in 2004, 2005 and 2006 with comparative figures of the Tribunal's workload in the same period.
- ANNEXE 2** Distribution of Compensation awarded by the Tribunal in Determinations of Unfair Dismissal in 2006.
- ANNEXE 3(A)** Number of Sittings of the Tribunal at the Various Venues in 2006.
- ANNEXE 3(B)** Particulars of Tribunal sittings in 2006.



**The Membership of the Employment Appeals Tribunal
on 31st December 2006**

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 Delahunta,
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.



ANNEXE 1 (A)

SUMMARY OF CLAIMS REFERRED TO THE TRIBUNAL IN 2006 AND THE OUTCOME OF THE CLAIMS DISPOSED OF IN 2006

Act	Number of Claims referred* ¹	Allowed	Dismissed	Withdrawn during Hearing	Withdrawn prior to Hearing	Total Number of Claims Disposed of* ²
Redundancy Payments	680	205	81	106	193	585
Minimum Notice and Terms of Employment	858	206	164	242	221	833
Unfair Dismissal (Direct Claims)	1167	170	206	379	311	1066
Protection of Employees (Employers' Insolvency)	5	1	3	0	0	4
Organisation of Working Time	403	92	83	146	99	420
Part Time Workers	0	0	0	0	0	0
TOTAL	3,113	674	537	873	824	2,908

*1. Some claims referred in 2006 not yet disposed of

*2. Some claims disposed of in 2006 were referred in 2005

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



ANNEXE 1 (B)

SUMMARY OF APPEALS AGAINST THE RECOMMENDATIONS OF RIGHTS COMMISSIONERS REFERRED TO THE TRIBUNAL IN 2006 AND THE OUTCOME OF THE APPEALS DISPOSED OF IN 2006

Legislation	Total Referred	Appeals By Employees						Cases disposed	Appeals by Employers					Cases Disposed	Total Disposed
		No referred	Outcome of Appeals						No Referred	Outcome of Appeals					
			I **	Rec upheld	Rec upset	Rec Varied	Appeals Withdrawn			Rec upheld	Rec upset	Rec Varied	Appeals Withdrawn		
Unfair Dismissal Acts, 1977-2001	124	95	33	10	10	3	21	77	29	6	3	5	14	28	105
Payment of Wages Act, 1991	101	55	0	18	9	3	14	44	46	16	4	4	20	44	88
Terms of Employment (Information) Act, 1994 & 2001	42	23	26	4	3	0	1	34	19	1	0	2	26	29	63
Maternity Protection Act, 1994	0	0	0	0	0	0	2	2	0	0	1	0	0	1	3
Parental Leave Act, 1998	4	4	0	1	0	0	1	2	0	0	0	0	0	0	2
EC (Transfer of Undertakings) Regulations 2003	95	86	0	0	0	0	0	0	9	0	0	0	0	0	0
EC (Protection of Employment) Regulations 2000	1	0	0	0	0	0	0	0	1	0	0	0	0	0	0
Competition Act 2002	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	367	263	59	33	22	6	39	159	104	23	8	11	60	102	261

** I - Claims referred for **Implementation**, which were disposed of by the EAT in 2005. See Annex 1C for details.

* Some appeals referred in 2006 not yet disposed of

* Some appeals disposed of in 2006 were referred in 2005



ANNEXE 1(C)

SUMMARY OF CLAIMS FOR IMPLEMENTATION REFERRED AND DISPOSED OF IN 2006 WHERE THE RECOMMENDATIONS OF THE RIGHTS COMMISSIONERS WERE NOT CARRIED OUT

Legislation	Total number of claims referred	Upheld	Upset	Appeals Withdrawn	Total Number of claims disposed of
Unfair Dismissals Act 1977 – 2001	33	20	0	13	33
Terms of Employment (Information) Act 1994 – 2001	26	4	0	22	26
Total	59	24	0	35	59



ANNEXE 1(D)

SUMMARY OUTCOME OF ALL APPEALS AGAINST THE RECOMMENDATIONS OF THE RIGHTS COMMISSIONERS, AND OF CLAIMS FOR IMPLEMENTATION WHERE THE RECOMMENDATIONS OF THE RIGHTS COMMISSIONER WERE NOT CARRIED OUT DURING 2006

Total number of appeals referred	Rec. Upheld	Rec. Upset	Rec. Varied	Appeals Withdrawn	Implementation	Total number of appeals disposed of
367	56	30	17	99	59	261



ANNEX 1(E)

AVERAGE WAITING PERIOD BETWEEN DATE OF RECEIPT AND DATE OF HEARING OF CASES IN 2004, 2005 AND 2006 WITH COMPARATIVE FIGURES OF TRIBUNAL'S WORKLOAD IN THE SAME PERIOD

Annual Average Waiting Period for Dublin			
	2004	2005	2006
Weeks	26	28	27

Annual Average Waiting Period for Provincial Areas			
	2004	2005	2006
Weeks	39	41	44

COMPARATIVE FIGURES FOR CLAIMS FOR UNFAIR DISMISSAL ONLY WHICH WERE REFERRED TO AND DISPOSED OF BY THE TRIBUNAL IN 2004, 2005 AND 2006

Unfair Dismissal claims	2004	2005	2006
Cases Referred	1419	1414	1291
Cases Disposed	1363	1090	1171



ANNEXE 2

**DISTRIBUTION OF COMPENSATION AWARDED BY THE TRIBUNAL
IN DETERMINATIONS OF UNFAIR DISMISSAL IN 2006**

Total Awarded: €2,627,003.56
Total Number of Determinations of Unfair Dismissal 221
Average €11,886.89

Compensation Award €	Number	Compensation Award €	Number
0	4	5001-6000	5
1 - 250	3	6001-7000	11
251 - 500	16	7001-8000	10
501 - 750	6	8001-9000	6
751 - 1000	11	9001-10000	10
1001 - 2000	25	10001-15000	25
2001 - 3000	20	15001-20000	5
3001 - 4000	13	20001-25000	3
4001 - 5000	12	>25001	36

Re-instatement was ordered in 2 cases

Re-engagement was ordered in 5 cases



ANNEXE 3 (A)

NUMBER OF SITTINGS OF THE TRIBUNAL AT VARIOUS VENUES IN 2006

LEINSTER		MUNSTER		CONNAUGHT		ULSTER	
VENUE	NO. OF SITTINGS AT EACH VENUE	VENUE	NO. OF SITTINGS AT EACH VENUE	VENUE	NO. OF SITTINGS AT EACH VENUE	VENUE	NO. OF SITTINGS AT EACH VENUE
Arklow	3	Cashel	12	Athlone	10	Cavan	5
Carlow	3	Clonakilty	1	Carrick-on-Shannon	9	Letterkenny	39
Drogheda	14	Clonmel	10	Castlebar	21	Monaghan	11
Dublin	517	Cork	111	Galway	33		
Dundalk	5	Ennis	24	Roscommon	7		
Kilkenny	7	Limerick	44	Sligo	18		
Longford	10	Mallow	1				
Mullingar	5	Nenagh	9				
Naas	31	Roscrea	3				
Navan	11	Thurles	2				
Portlaoise	16	Tralee	10				
Trim	7	Waterford	21				
Tullamore	8						
Wexford	16						
Wicklow	8						
TOTAL	661		248		98		55



ANNEXE 3 (B)

**PARTICULARS OF TRIBUNAL SITTINGS IN 2006
Between 1st January – 31st December 2006**

No. of Sitting days	No. of days 1 Division sat	No. of days 2 Divisions sat	No. of days 3 Divisions sat	No. of days 4 Divisions sat	No. of days 5 Divisions sat	No. of days 6 Divisions Sat	No. of days 7 Divisions sat	Number of Sitzings		Total No. of Sitzings	No. of Venues Tribunal sat.
								Dublin	Provinces		
229	4	10	93	244	380	216	112	517	545	1062	36