



AN BINSE ACHOMHAIRC FOSTAÍOCHTA

**THE EMPLOYMENT APPEALS
TRIBUNAL**

FORTY-FIRST

ANNUAL REPORT

2008



AN BINSE ACHOMHAIRC FOSTAÍOCHTA

THE EMPLOYMENT APPEALS TRIBUNAL

FORTY-FIRST ANNUAL REPORT

2008

Submitted to the

Minister for Enterprise, Trade and Employment

in pursuance of

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



CONTENTS	PAGE(S)
Chairman's Submission to the Minister for Enterprise, Trade and Employment	1
Section 1: Corporate Statement and Activities in 2008	3
Section 2: Membership of the Tribunal	10
Section 3: Appeals and Claims Referred and Disposed of by the EAT in 2008	13
<i>Redundancy Payments Acts, 1967 to 2007</i>	15
<i>Minimum Notice and Terms of Employment Acts, 1973 to 2005</i>	15
<i>Unfair Dismissals Acts, 1977 to 2007</i>	15
<i>Maternity Protection Act, 1994 and 2004</i>	16
<i>Protection of Employees (Employers' Insolvency) Acts, 1984 to 2004</i>	17
<i>Payment of Wages Act, 1991</i>	17
<i>Terms of Employment (Information) Act, 1994 and 2001</i>	17
<i>Adoptive Leave Act, 1995 and 2005</i>	18
<i>Protection of Young Persons (Employment) Act, 1996</i>	18
<i>Organisation of Working Time Act, 1997</i>	18
<i>Parental Leave Act, 1998 and 2006</i>	19
<i>Protections for Persons Reporting Child Abuse Act, 1998</i>	19
<i>European Communities (Protection of Employment) Regulations, 2000</i>	20
<i>European Communities (Protection of Employees on Transfer of Undertakings) Regulations, 2003</i>	20
<i>Carer's Leave Act, 2001</i>	20
<i>Competition Act, 2002</i>	21
<i>Civil Service Regulation (Amendment) Act, 2005</i>	21
<i>Chemicals Act 2008</i>	21
<i>Average waiting period for cases to be heard</i>	21
<i>Appeals to Higher Courts</i>	21
<i>Number of Tribunal Sittings</i>	22
<i>Number of Postponements</i>	22
<i>Applications for Interpreters</i>	23
<i>Representation at Hearings</i>	23
Section 4: Statistics	24



Chairman's Submission to Ms. Mary Coughlan

Tánaiste and Minister for Enterprise, Trade and Employment

Dear Tánaiste

I am pleased to submit the Annual Report of the Employment Appeals Tribunal for the year 2008 to you, in accordance with Section 39 (18) of the Redundancy Payments Acts 1967 to 2007. This is my first report to you as Minister for Enterprise, Trade and Employment and my eighth 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 sixteen Acts of the Oireachtas and two statutory instruments to deal with individual employment rights disputes that arise either during the course of employment or on the termination of the employment relationship.

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

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

There was an increase in the number of cases referred to the Tribunal in 2008. The number of cases referred increased from 3,173 in 2007 to 5,457 in 2008, an increase of 2,284 cases or 72%. There was an approximate doubling and in one case a trebling of referrals under the usual Acts. The number of redundancy referrals rose by 121% to 1,407 in 2008. The number of cases referred under the Unfair Dismissals Acts rose to 1,538 in 2008, which is an increase of 36.5% on the number referred in 2007. Adjudicating unfair dismissal cases accounts for approximately 85% of the Tribunal's workload in terms of the time spent on hearings. The number of appeals from the Recommendations and Decisions of Rights Commissioners referred to the Tribunal also rose significantly to 447 in 2008 from 246 in 2007, which is an increase of 81%.



I am happy to report that there was a substantial increase in the Tribunal's output over 2008. The number of cases disposed of rose from 2,807 in 2007 to 4,007 in 2008, which was an increase of 1,200 or 43%.

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 made significant progress in reducing the waiting period for hearings in 2008. The waiting period in Dublin was reduced from 20 weeks to 16 weeks and in provincial areas it was reduced from an average of 51 weeks in 2007 to an average of 31 weeks in 2008.

The welcome developments of reducing the backlog of cases waiting to be heard while at the same time significantly increasing the number of cases disposed of is due to the Department's allocation of additional staff to the secretariat as well as the additional work put in by the members. The Department's support was much appreciated and I look forward to its continuing support to deal with the Tribunal's increasing workload.

I thank both you and Minister Billy Kelleher for your support to the Tribunal in 2008 and look forward to your continuing support for the work of the Tribunal.

I also thank the members for their commitment and dedication to the work of the Tribunal. The results achieved in 2008 are testament to their extra effort.

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

Yours sincerely

Kate T O'Mahony
Chairman



**FORTY-FIRST ANNUAL REPORT OF
THE EMPLOYMENT APPEALS TRIBUNAL FOR YEAR ENDING
31ST DECEMBER 2008**

Section 1

Corporate Statement and Activities for 2008



Introduction

The Redundancy Payments Act of 1967, which established the Redundancy Appeals Tribunal, was enacted on 18th December 1967. At the time, the creation of the Tribunal was considered an innovative move, by the State, in the area of employment rights. It was set up to ensure that a worker's statutory entitlement to redundancy was given the force, as well as the full protection of the law. The Act thus established a forum within which the ordinary 'man in the street' could refer a claim to have those rights upheld. Apart from its continuing responsibility to hear appeals under the Redundancy Payments Acts, today, under its revised title, the Employment Appeals Tribunal now deals with seventeen other separate pieces of legislation (see complete list below). These range from claims for unfair dismissal to minimum notice, as well as hearing appeals from decisions and recommendations of the Rights Commissioner Service of the Labour Relations Commission.

The inaugural meeting of the first Redundancy Appeals Tribunal took place on 22nd March 1968, under the guardianship and protection of the first sixteen Members appointed to the Tribunal. The first Chairman, Mr. John Gleeson, led the Tribunal. It heard its first appeal on 18th April 1968. Between that date and 31st December 1968, the Tribunal sat on seventy-five (75) days and heard a total of one hundred and thirty three (133) appeals. Eighty-three (83) of those appeals were heard in Dublin, and the remaining fifty appeals (50) were heard at various other centres around the country. From the start, then, it was clear that the Tribunal would have a countrywide and therefore a national dimension to its work. Forty years on, the Employment Appeals Tribunal continues the work started by the Tribunal's 'founding fathers'. Indeed, instead of its early base of sixteen (16) Members, there are now one hundred and sixteen (116) Members of the Tribunal (See Appendix 1).

Our Mission Statement

As envisaged in 1967, the Employment Appeals Tribunal remains an independent body established to provide a speedy, inexpensive and relatively informal means for the adjudication of disputes on employment rights under the body of legislation that comes within the scope of the Tribunal. It is our continuing goal that customers using the services of the Tribunal will be satisfied overall with the service they have received from the Tribunal.

The Tribunal remains as committed today, as it did on its establishment day, to the impartial adjudication of disputes between parties.



➤ **Our work**

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

The Tribunal was originally set up to adjudicate in disputes about redundancy between employees and employers and between employees or employers and the Minister for Labour (now Enterprise, Trade and 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 2007**, it also deals with disputes under the following legislation:

Minimum Notice and Terms of Employment Acts 1973 to 2005;
Unfair Dismissals Acts 1977 to 2007;
Maternity Protection Act 1994 and 2004;
Protection of Employees (Employers' Insolvency) Acts 1984 to 2004;
Payment of Wages Act 1991;
Terms of Employment (Information) Act 1994 and 2001;
Adoptive Leave Act 1995 and 2005;
Protection of Young Persons (Employment) Act 1996;
Organisation of Working Time Act 1997;
Parental Leave Act 1998 and 2006;
Protections for Persons Reporting Child Abuse Act 1998;
European Communities (Protection of Employment) Regulations 2000;
European Communities (Protection of Employees on Transfer of Undertakings) Regulations, 2003;
Carer's Leave Act 2001;
Competition Act 2002;
Civil Service Regulation (Amendment) Act 2005; and the
Chemicals Act 2008.

➤ **Composition of the Tribunal**

The Tribunal consists of a Chairman and thirty-six Vice-Chairmen and a panel of eighty other members, forty nominated by the Irish Congress of Trade Unions and forty by organisations representative of employers. The Redundancy Payments Act, 1979 provides for the appointment of additional Vice-Chairmen and Members whenever the Minister for Enterprise, Trade and 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 at Section 2.

➤ **The Secretariat**

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

Civil Servants assigned by the Department of Enterprise, Trade and 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 2008

➤ **Appointment of Members to the Tribunal in 2008**

The term of office of the Tribunal, which was appointed on 30th January 2007, will run until 29th January 2010. Two new members were appointed in 2008 – Sandra McNally and Tony Taaffe.

➤ **2008 Statistics: An Overview**

There were 1,304 sittings of the Tribunal, held at 41 separate locations, during 2008. Of these, 458 sittings took place in Dublin, and 846 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 2008, was 5,457. The Tribunal disposed of 4,007 claims during the year.



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

Details relating to the work of the Tribunal in 2008, and the statistical data upon which this Report is based are outlined in **Section 3: Claims Referred and Disposed of by the Tribunal in 2008** and in **Section 4: Statistics**.

Services undertaken by the Tribunal during 2008

➤ 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.



➤ **Information Technology: EAT Website and EAT online services in 2008.**

There were 1.9m hits on the website in 2008, which brings the total number of hits from its launch date on 3rd April 2006 to approx 4.3m hits. This is a favourable outcome over the period.

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 was *eDecisions* went live in July 2008.

It is envisaged that work on Phase 3 of the IT project – *eApplications* – will continue to be assessed in 2009.

➤ **Freedom of Information Act 1997**

The Freedom of Information Act 1997 (as amended), when applied to the Tribunal, will cover only the administrative functions of the Tribunal. All information of a personal nature will continue to be protected personal information as defined by the Data Protection Act, 1988 and 2003.

➤ **European Association of Labour Court Judges**

The Tribunal fosters and continues to build upon the working relationship that already exists between it, and practitioners in employment law in Europe.

Representatives from the Tribunal attended the annual conference of the European Association of Labour Court Judges in 2008. The conference took place in Vienna, Austria, on 4th and 5th July 2008.

➤ **“School's Out: Learning in the Workplace”**

Tribunal hearings are held in public. 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 2008, the Tribunal welcomed first and repeat visits from various educational establishments, under the auspices of its 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.

The Tribunal also welcomed visits from voluntary sector groups, in particular groups from the Citizens’ Information Centres, and from community law groups.

Conclusion

From its first steps, in 1967, and throughout the forty-one years of its existence, the Tribunal has performed an important public service, in bringing a human face to the complex field of employment law. It is extremely gratifying to acknowledge in this, the 41st Annual Report of the Tribunal, the commitment and dedicated service, of current and past Members and staff, all of whom have helped the many individuals who have passed through the Tribunal since it was established on 18th December 1967.



**FORTY-FIRST ANNUAL REPORT OF
THE EMPLOYMENT APPEALS TRIBUNAL FOR YEAR ENDING
31ST DECEMBER 2008**

Section 2

Membership of the Tribunal



Section 2

Membership of the Tribunal

All appointments effective from 30th January 2007, unless indicated

Chairman:

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

Vice-Chairmen:

Sinead Behan, Barrister-at-Law

Olive Brennan, Barrister-at-Law

Kieran Buckley, Solicitor

David Cagney, Barrister-at-Law

Pamela Clancy, Solicitor

Emile Daly, Barrister-at-Law

John Fahy, Barrister-at-Law

James Flanagan, Barrister-at-Law

William Benedict Garvey, Barrister-at-Law

Myles Gilvarry, Solicitor

Clodagh Gleeson, Barrister-at-Law

Bernadette Glynn, Solicitor

Dara Hayes, Barrister-at-Law

Patrick Hurley, Solicitor

Elva Kearney, Barrister-at-Law

Kevin P. Kilrane, Solicitor*

Margaret Levey, Barrister-at-Law

Dermot MacCarthy, Senior Counsel

Desmond Mahon, Barrister-at-Law

Sean Mahon, Solicitor

Mary McAveety, Solicitor

Penelope McGrath, Barrister-at-Law

Saundra McNally, Solicitor**

Eamonn Murray, Solicitor

Niamh O'Carroll Kelly, Barrister-at-Law

Leachlain S. Ó Catháin, Solicitor

Mark O'Connell, Barrister-at-Law

Jeremiah O'Connor, Solicitor

Rachel O'Flynn, Barrister-at-Law

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

Seán O'Riordáin, Barrister-at-Law



Marian Petty, Solicitor
Moya Quinlan, Solicitor
Pat Quinn, Barrister-at-Law
Tom Ryan, Solicitor
Jeremiah Sheedy, Solicitor
Tony Taaffe, Solicitor **

Employers Panel:

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

Employees Panel:

Frank Barry, Eveta Brezina, Nick Broughall, Al Butler,
Brendan Byrne, Catherine Byrne, Paul Clarke, Anne Clune,
Jim Dorney, Patsey Doyle, Mary Finnerty, Kay Garvey,
Noirin Greene, Helen Henry, George Hunter, Hilary Kelleher,
Tony Kennelly, Rosabel Kerrigan, George Lamon,
Joe LeCumbre, Sean Mackell, Joe Maher, Mary Maher,
Peter McAleer, John McDonnell, Dominic McEvoy,
Michael McGarry, Bernard McKenna, Alice Moore,
Jim Moore, Maire Mulcahy, Owen Nulty, Phil Ni Sheaghda,
Kevin O'Connor, Seamus O'Donnell, Emer O'Shea*, Ciaran Ryan,
Paddy Trehy, Catherine Warnock, Gerry Whyte, Patrick Woods.

Secretary:

Dominic McBride

* Resigned

** Appointed 14th November 2008



**FORTY-FIRST ANNUAL REPORT OF
THE EMPLOYMENT APPEALS TRIBUNAL FOR YEAR ENDING
31ST DECEMBER 2008**

Section 3

Appeals and Claims Referred and Disposed of by the Tribunal in 2008



Appeals and Claims referred to the Tribunal During 2008

Legislation	2007	2008
	No.	No.
Minimum Notice and Terms of Employment Acts	869	1485
Unfair Dismissals Acts (*This figure includes 148 Appeals against Rights Commissioners' Recommendation)	1127*	1538*
Redundancy Payments Acts	637	1407
Protection of Employees (Employers' Insolvency) Acts	3	-
Maternity Protection Act	1	2
Payment of Wages Act (Appeals against Rights Commissioners' Decisions)	94	196
Terms of Employment (Information) Act (Appeals against Rights Commissioners' Recommendations)	64	186
Adoptive Leave Act (Appeals against Rights Commissioners' Recommendations)	-	-
Protection of Young Persons (Employment) Act (Appeals against Rights Commissioner's Recommendations)	-	1
Organisation of Working Time Act	366	619
Parental Leave Act (Appeals against Rights Commissioners' Decisions)	1	-
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)	11	23
European Communities (Protection of Employment) Regulations, 2000 (Appeals against Rights Commissioners' Decisions)	-	-
Carer's Leave Act (Appeals against Rights Commissioners' Decisions)	-	-
Competition Act 2002	-	-
Civil Service Regulation (Amendment) Act 2005	-	-
Chemicals Act 2008	-	-
TOTAL	3,173	5,457



REDUNDANCY PAYMENTS ACTS 1967 TO 2007

Under the Redundancy Payments Act, 2003 an eligible employee is entitled to two weeks statutory redundancy payment for every year of service together with a bonus. 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 **1,038** claims disposed of **349** were allowed, **171** were dismissed, **128** were withdrawn during hearing and **390** were withdrawn prior to hearing.

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS 1973 To 2005

In 2003, the Protection of Employees (Employers' Insolvency) Acts, 1984 and 2001 were amended to allow claims for statutory notice entitlements, where the employer is insolvent, to be made directly to the Insolvency Payments Unit of the Department of Enterprise, Trade and Employment, 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 **1,113** claims disposed of under the Minimum Notice and Terms of Employment Acts, **285** were allowed, **212** were dismissed, **235** were withdrawn during hearing and **381** were withdrawn prior to hearing.

UNFAIR DISMISSALS ACTS, 1977 To 2007

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



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

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

Outcome of Claims and Appeals under the Unfair Dismissals Acts

Direct Claims

Of the total of **1,111** claims disposed of, **237** were allowed, **210** were dismissed, **280** were withdrawn during hearing and **384** were withdrawn prior to hearing.

Appeals against Recommendations of Rights Commissioners

148 cases were appealed to the Tribunal during 2008.

Of the **113** appeals against the Recommendations of Rights Commissioners disposed of by the Tribunal, **32** were upheld, **15** were upset, **12** were varied and **54** were withdrawn.

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

32 claims were referred to the Tribunal for implementation during 2008. Of the **28** claims disposed of **12** claims were upheld and **16** claims were withdrawn.

Forms of Redress

The Tribunal awarded compensation amounting to €2,903,316 in **253** cases. The average compensation awarded by the Tribunal was €11,476. Re-instatement was ordered in **7** cases and re-engagement was ordered in **4** cases. The distribution of compensation awarded by the Tribunal is shown in Annexe 2.

MATERNITY PROTECTION ACT 1994 and 2004

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

2 appeals were referred to the Tribunal in 2008. There were no cases disposed of during 2008.



PROTECTION OF EMPLOYEES (EMPLOYERS' INSOLVENCY) ACTS

1984 To 2004

Financial entitlements of employees who lose their jobs as a result of their employers' insolvency are substantially protected under the 1984 Act as amended. Claims under the Act as amended take the form of complaints against decisions of the Minister for Enterprise, Trade and 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.

There were **3** complaints dismissed and disposed of in 2008.

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

Of the **104** appeals disposed of by the Tribunal, **35** were upheld, **15** were upset, **14** were varied and **40** 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.

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



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 **89** cases disposed of by the Tribunal, **41** were upheld, **5** were upset, **10** were varied and **33** were withdrawn.

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

Of the **43** claims for implementation **23** were upheld and **20** were withdrawn.

ADOPTIVE LEAVE ACTS 1995 and 2005

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

There were no appeals to the Tribunal during the year ending 31st December 2008.

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 was **1** appeal to the Tribunal withdrawn during the year ending 31st December 2008.

ORGANISATION OF WORKING TIME ACT 1997

Section 39 of the Organisation of Working Time Act provides for a solution to difficulties encountered with the enforcement of decisions of the Employment Appeals Tribunal and other specified bodies under the legislation administered by it where details relating to an employer are incorrectly set out in a Tribunal decision. Section 39 allows an employee, where an employer is inadvertently incorrectly identified before



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

There were **435** claims disposed of by the Tribunal during the year ending 31st December 2008. Of these, **61** were allowed, **91** were dismissed, **131** were withdrawn during hearing and **152** were withdrawn prior to hearing.

PARENTAL LEAVE ACTS 1998 and 2006

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

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

There were no appeals to the Tribunal during the year ending 31st December 2008.

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 2008.



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 to the Tribunal during the year ending 31st December 2008.

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.

23 appeals were referred to the Tribunal during the year ending 31st December 2008.

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 2008.

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 2008.

CIVIL SERVICE REGULATION (AMENDMENT) ACT 2005

Under this Act most civil servants now bring claims under the Unfair Dismissals Acts and Minimum Notice and Terms of Employment Acts as of 4th July 2006.

CHEMICALS ACT 2008

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

There were no appeals under the Chemicals Act 2008 to the Tribunal during the year ending 31st December 2008.

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 **16** weeks in Dublin and **31** weeks in provincial areas.

APPEALS TO THE HIGH COURT

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



APPEALS TO CIRCUIT COURTS

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

In 2008, **100** cases were appealed to the circuit court. From the information submitted by the Circuit Court Offices in respect of these cases, **8** were upheld, **11** were struck out, **7** were adjourned and **33** were pending. No information is available in respect of the remaining **41** cases.

NUMBER OF TRIBUNAL SITTINGS

During the year under review, Divisions of the Tribunal sat on **1,430.5** days at **41** different venues throughout the country. On **69** of these days, **7** or more Divisions of the Tribunal sat. The total number of sittings was **1,304** (**458** in Dublin and **846** in the Provinces). The number of sittings at each venue varied from a single sitting at a number of venues in the Provinces to **458** 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 2008 are shown at Annexe 3(B).

NUMBER OF POSTPONEMENTS

Cases are set down for hearing and dates notified to the parties, on average five to six weeks in advance of this. Postponements may be granted only in exceptional circumstances. If a postponement is sought immediately or within 5 working days of receiving the notice of hearing and the consent of the other party to the case has been obtained, it may be granted. If a postponement is sought later and/or without the consent of the other party it is highly likely to be refused. This setting down system, designed primarily for the convenience of parties, renders some applications for postponements inevitable. Postponements, which are applied for too close to the date of hearing and are granted, result in the loss of scheduled Tribunal sitting time. This loss of time adversely affects the setting down system, increases costs, and results in further delays between the date of referral of a claim and the date of hearing for all claimants.

In 2008, the total number of postponement applications was **480** of which **352** were granted and **128** were refused. There were **84.5** lost sittings days of divisions due to postponements in 2008.



APPLICATIONS FOR INTERPRETERS

There were **86** applications received and granted for the services of an Interpreter during 2008.

REPRESENTATION AT HEARINGS

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

Details of the representation under the various Acts or combination of Acts in 2008 are as follows:

- **1,332** employee parties were represented (**282** by trade unions, **831** by legal representation and **219** other persons).
- **923** employer parties were represented (**77** by employers' associations, **626** by legal representation and **220** other persons).

Details of the representation under the Unfair Dismissals Acts, 1977 to 2007 are as follows:

- **813** employee parties were represented (**106** by trade unions, **636** by legal representation and **71** by other persons).
- **682** employer parties were represented (**63** by employers' associations, **479** by legal representation and **140** by other persons).

Kate T. O'Mahony

Chairman



**FORTY-FIRST ANNUAL REPORT OF
THE EMPLOYMENT APPEALS TRIBUNAL FOR YEAR ENDING
31ST DECEMBER 2008**

Section 4

Statistics



APPENDICES

- ANNEXE 1(A)** Summary of Claims Referred to the Tribunal in 2008 and the Outcome of the Claims Disposed of in 2008.
- ANNEXE 1(B)** Summary of Appeals against the Recommendations of Rights Commissioners Referred to the Tribunal in 2008 and the Outcome of the Appeals disposed of in 2008.
- ANNEXE 1(C)** Summary of claims for implementation Referred and Disposed of in 2008 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 2008.
- ANNEXE 1(E)** Average waiting period between date of receipt and date of hearing of cases in 2006, 2007 and 2008 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 2008.
- ANNEXE 3(A)** Number of Sitzings of the Tribunal at the Various Venues in 2008.
- ANNEXE 3(B)** Particulars of Tribunal sittings in 2008.



ANNEXE 1 (A)

SUMMARY OF CLAIMS REFERRED TO THE TRIBUNAL IN 2008 AND THE OUTCOME OF THE CLAIMS DISPOSED OF IN 2008

Act	Number of Claims referred* ¹	Allowed	Dismissed	Withdrawn during Hearing	Withdrawn prior to Hearing	Total Number of Claims Disposed of* ²
Redundancy Payments	1407	349	171	128	390	1038
Minimum Notice and Terms of Employment	1485	285	212	235	381	1113
Unfair Dismissal (Direct Claims)	1390	237	210	280	384	1111
Protection of Employees (Employers' Insolvency)	0	0	3	0	0	3
Organisation of Working Time	619	61	91	131	152	435
TOTAL	4901	932	687	774	1307	3700

*1. Some claims referred in 2008 not yet disposed of

*2. Some claims disposed of in 2008 were referred in 2007

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 2008 AND THE OUTCOME OF THE APPEALS DISPOSED OF IN 2008

Legislation	Total Referred	Appeals By Employees					Cases disposed	Appeals by Employers					Cases Disposed	Total Disposed
		No referred	Outcome of Appeals					No Referred	Outcome of Appeals					
			Rec upheld	Rec upset	Rec Varied	Appeals Withdrawn			Rec upheld	Rec upset	Rec Varied	Appeals Withdrawn		
Unfair Dismissal Acts, 1977-2007	116	61	14	9	6	19	48	55	6	6	6	19	37	85
Payment of Wages Act, 1991	196	100	18	5	4	21	48	96	17	10	10	19	56	104
Terms of Employment (Information) Act, 1994 & 2001	109	27	8	1	4	3	16	82	10	4	6	10	30	46
Maternity Protection Act, 1994 and 2004	2	2	-	-	-	-	0	-	-	-	-	-	0	0
Parental Leave Act, 1998 and 2006	-	-	-	-	-	-	0	-	-	-	-	-	0	0
EC (Transfer of Undertakings) Regulations 2003	23	3	-	-	-	-	0	16	-	-	-	-	0	0
EC (Protection of Employment) Regulations 2000	-	-	-	-	-	-	0	-	-	-	-	-	0	0
Competition Act 2002	-	-	-	-	-	-	0	-	-	-	-	-	0	0
Protection of Young Person (Employment) Act, 1996	1	-	-	-	-	1	1	-	-	-	-	-	0	1
Total	447	193	40	15	14	44	113	249	33	20	22	48	123	236

* Some appeals referred in 2008 not yet disposed of

* Some appeals disposed of in 2008 were referred in 2007



ANNEXE 1(C)

**SUMMARY OF CLAIMS FOR IMPLEMENTATION REFERRED AND DISPOSED OF IN 2008 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	32	12	-	16	28
Terms of Employment (Information) Act 1994 – 2001	77	23	-	20	43
Total	109	35	-	36	71



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 2008

Total number of appeals referred	Rec. Upheld	Rec. Upset	Rec. Varied	Appeals Withdrawn	Implementation	Total number of appeals disposed of
556	108	35	36	128	114	307



ANNEX 1(E)

AVERAGE WAITING PERIOD BETWEEN DATE OF RECEIPT AND DATE OF HEARING OF CASES IN 2006, 2007 and 2008 WITH COMPARATIVE FIGURES OF TRIBUNAL'S WORKLOAD IN THE SAME PERIOD

Annual Average Waiting Period for Dublin			
	2006	2007	2008
Weeks	27	20	16

Annual Average Waiting Period for Provincial Areas			
	2006	2007	2008
Weeks	44	51	31

COMPARATIVE FIGURES FOR CLAIMS FOR UNFAIR DISMISSAL ONLY WHICH WERE REFERRED TO AND DISPOSED OF BY THE TRIBUNAL IN 2006, 2007 and 2008.

Unfair Dismissal claims	2006	2007	2008
Cases Referred	1291	1127	1538
Cases Disposed	1171	1024	1224



ANNEXE 2
DISTRIBUTION OF COMPENSATION AWARDED BY THE TRIBUNAL
IN DETERMINATIONS OF UNFAIR DISMISSAL IN 2008

Total Awarded: €2,903,316
Total Number of Determinations of Unfair Dismissal 253
Average €11,476

Compensation Award €	Number	Compensation Award €	Number
0	4	5001-6000	11
1 - 250	3	6001-7000	5
251 - 500	2	7001-8000	16
501 - 750	6	8001-9000	8
751 - 1000	12	9001-10000	18
1001 - 2000	30	10001-15000	28
2001 - 3000	27	15001-20000	14
3001 - 4000	19	20001-25000	13
4001 - 5000	12	>25001	25

Re-instatement was ordered in 7 cases

Re-engagement was ordered in 4 cases



ANNEXE 3 (A)

NUMBER OF SITTINGS OF THE TRIBUNAL AT VARIOUS VENUES IN 2008

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	1	Bantry	3	Ballaghaderreen	2	Cavan	15
Athlone	1	Clonmel	16	Carrick-on-		Donegal	4
Carlow	16	Cork	157	Shannon	17	Letterkenny	40
Drogheda	15	Ennis	19	Castlebar	31	Monaghan	8
Dublin	458	Horse & Jockey	13	Galway	68		
Dundalk	21	Killarney	19	Roscommon	16		
Enniscorthy	2	Limerick	69	Sligo	27		
Kilkenny	7	Mallow	2				
Longford	10	Nenagh	10				
Mullingar	13	Roscrea	2				
Naas	48	Skibbereen	1				
Navan	38	Thurles	2				
Portlaoise	16	Tralee	13				
Trim	1	Waterford	36				
Tullamore	12						
Wexford	27						
Wicklow	18						
TOTAL	704		362		161		67



ANNEXE 3 (B)

PARTICULARS OF TRIBUNAL SITTINGS IN 2008

Between 1st January – 31st December 2008

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		
233	-	4	19	39	53	49	69	458	846	1304	41