

Presentation to the Ministry of Labour and Social Security of the Peoples Republic of China by the Employment Appeals Tribunal of Ireland

The Employment Appeals Tribunal

The Employment Appeals Tribunal was established under the Redundancy Payments Act 1967.

The Tribunal is an independent quasi-judicial body which adjudicates on individual employment rights disputes. The Tribunal's decisions are legally binding.

The objective of the Tribunal is to provide an accessible, informal and inexpensive forum for the speedy resolution of the disputes.

Composition of the Tribunal

The Tribunal consists of 3 members:

- a chairman who must be a barrister or solicitor of at least seven years standing,
- a panel of 31 vice-chairmen who are usually barristers or solicitors,
- a panel of 36 ordinary members nominated by the Irish Congress of Trade Unions, and
- a panel of 36 ordinary members nominated by employers' organisations.

The relevant Minister appoints the members to the Tribunal for a three-year term. Members are eligible for reappointment. All members of the Tribunal work with the Tribunal on a part-time basis. The function of the ordinary members on the Tribunal is not to represent the employer or employee but to bring their expertise and experience of the workplace to bear on the adjudicate function of the Tribunal.

The Secretariat performs the administrative function of the Tribunal.

Operational Structure of the Tribunal

The Tribunal acts in divisions. A division comprises 3 members:

- Either the Chairman or Vice-Chairman,
- One member from the panel nominated by the employers' organisations, and
- One member from the panel nominated by the Irish Congress of Trade Unions.

An officer of the secretariat acts as a secretary for each division and takes a record of the evidence.

In general six divisions sit each day.

Ways in which cases may come before the Tribunal

1. *Cases referred directly to the Tribunal:*

- claims for unfair dismissal where the employment contract has been terminated,
- Redundancy claims where the employer is closing or downsizing his business,
- claims for compensation where no or insufficient notice of dismissal was given to the employee prior to dismissal,
- claims in respect of holiday pay can be made in conjunction with any of the above claims.

2. *Appeals from a recommendation/decision of a Rights Commissioner under the following Acts:*

- (i) Unfair Dismissals Acts, 1977 to 2001
- (ii) Payment of Wages Act, 1991
- (iii) Terms of Employment (Information) Acts, 1994 and 2001
- (iv) Maternity Protection Act, 1994
- (v) Adoptive Leave Act, 1995

- (vi) Protection of Young Persons (Employment) Act, 1996
- (vii) Parental Leave Act, 1998-2006
- (viii) Protections for Persons Reporting Child Abuse Act, 1998
- (ix) European Communities (Protection of Employees on Transfer of Undertakings) Regulations, 2003
- (x) European Communities (Protection of Employment) Regulations, 2000
- (xi) Carer's Leave Act, 2001
- (xii) Competition Act, 2002

3. *Complaints by employees against the decision of the Minister* for certain outstanding payments owed by the employer where the employer has been declared insolvent.

4. *Claims by an employee seeking to implement the recommendation of a Rights Commissioner* where the employer has failed to carry out the terms of the recommendation within the time limit for bringing an appeal and no appeal has been brought.

Claims and appeals must be initiated within the prescribed statutory time limit. The time limit for bringing a claim may be extended.

The Unfair Dismissals Acts

Hearing *unfair dismissal cases* is the core work of the Tribunal. Approximately 95% of the Tribunal's workload in terms of the time spent at hearings.

A claim for unfair dismissal may be made at first instance either to the Tribunal or to a Rights Commissioner sitting alone. Where the Rights Commissioner hears the claim at first instance either party may appeal his recommendation to the Tribunal.

Certain categories of employees are excluded from the benefit of the Act. In general an employee must have at least one year's continuous service with his former employer. The claim must be initiated within 6 months of the date of the dismissal but in certain circumstances this may be extended to a year.

Claims for unfair dismissal may be brought either because the employer has dismissed the employee or a case for constructive dismissal where the employee was caused to resign from his/her employment because of the conduct or omission of the employer.

The most common grounds on which employees bring claims for unfair dismissal

- Misconduct
- Unfair selection for Redundancy
- Incompetence
- Failure by the employer to follow fair procedures when dismissing the employee

The most common forms of misconduct alleged against the employee:

- dishonesty,
- time-keeping, absenteeism and clocking offences,
- abuse of sick leave,
- alcohol abuse,
- criminal convictions (in certain circumstances),
- refusal to obey instructions or directions,
- breach of loyalty and fidelity to the employer,
- violence and intimidation.

The most common grounds for constructive dismissal claims are:

- Bullying and/or harassment,
- Fundamental changes in terms and conditions of employment and in work practices,
- Failure by management to address an employee's concerns and issues as they arise

The most common failures in dismissal procedures are:

- Failure to carry out a full investigation,
- Failure to put the allegations to the employee,
- Failure to allow him/her an opportunity to prepare his/her defence,
- Failure to allow him/her to have a representative

“Workplace bullying is repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual’s right to dignity at work.

An isolated incident of the behaviour described in this definition may be an affront to dignity at work but as a once off incident is not considered to be bullying.”

Making a claim/appeal to the Tribunal

Complete the relevant form and lodge it with the Tribunal. The forms require specific information (names and addresses of the employee and employer; employee’s date of birth, date of commencement of employment, date of dismissal and date notice of dismissal given; weekly earnings).

The Tribunal does not require submissions. While the form also seeks a brief summary of the facts of the claim/appeal, employees frequently fail to provide the summary. The Tribunal accepts this as one of its core principles is to be accessible to all employees and employers including those who are not represented.

The employer is given an opportunity to provide a response to the claim on a different form.

A party may represent himself/herself at the hearing, or may be represented by a trade union official, a representative of an employers’ organisation, a solicitor, a barrister or, with the leave of the Tribunal, by any other person.

The Hearing

Hearings before the Tribunal are more informal than hearings in the courts. Evidence is given under oath in unfair dismissal cases but not in most other cases. The Tribunal is more lenient than the courts in its application of the rules of evidence. As the function of the Tribunal is to vindicate employment rights, it must of necessity apply some rules of evidence so as not to imperil a

fair hearing. The Tribunal ensures that each side to a case is treated fairly and that fair procedures are applied.

Cases are heard in public except on very rare occasions. Dismissals for either having reported child abuse to a relevant authority or having made a complaint to the Competition Authority are always heard in private.

Remedies

When the Tribunal finds that a claimant has been unfairly dismissed it will grant one of three remedies:

- Re-instatement puts the claimant into the position s/he was in immediately prior to the dismissal, preserves all his/her statutory and employment entitlements and requires that the salary/wages be paid to that person from the date of dismissal.
- Re-engagement puts the claimant back into the same or different position on such terms and conditions as the Tribunal deems fit and from a date to be decided by the Tribunal.
- Compensation is limited to actual financial loss up to a ceiling of two years' gross remuneration; gross remuneration can include not only salary but also the cost to the employer of other benefits provided to the employee. A dismissed employee must seek alternative employment after his/her dismissal and failure to do so will be taken into account when assessing compensation.

The Tribunal has discretion to grant the remedy it considers most appropriate in the circumstances.

The Determination

The determination of the Tribunal is by unanimous or majority decision and is issued in written form.

Costs

The only costs incurred for having a claim heard is where the parties opt to have legal representation or where a summons has been issued on their behalf. The Tribunal may only award costs against a party if, in its opinion, that party has acted frivolously or vexatiously. Such costs are confined to a specified amount will not include a sum for the attendance of representatives.

A determination of the Tribunal may be appealed to the higher courts.

The Work of the Tribunal

Direct claims:

Redundancy Payments Acts, 1967 to 2003,
Minimum Notice and Terms of Employment Acts, 1973 to 2001,
**Unfair Dismissals Acts, 1977 to 2001,*
Protection of Employees (Employers' Insolvency) Acts, 1984 to 2001,
Organisation of Working Time Act, 1997.

Appeal of recommendation of a Rights Commissioner:

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

The Act specifies that certain dismissals are unfair.

- **trade union membership or activity**
- **pregnancy, giving birth, breast feeding,**
- **religious or political opinions,**
- **race, colour or sexual orientation,**
- **age of employee,**
- **an employee's membership of a travelling community,**
- **legal proceedings against an employer where an employee is a party or a witness,**
- **unfair selection for redundancy,**
- **Employee's pregnancy, attendance at ante-natal classes, giving birth or breast feeding or any matters connected therewith,**
- **The exercise or proposed exercise of a right under the Maternity Protection Act, Adoptive Leave Act, Parental Leave Act or Carer's** Leave Act.**

A dismissal on any of the following an employer must show that it resulted from one or more of the following causes:

- **Capability, competence or qualification of the employee for the work s/he was employed to do**
- **The employees conduct**
- **Redundancy**
- **The fact that continuation of the employment would contravene another statutory requirement,**
- **or other substantial grounds.**

Payment of Wages Act establishes a range of rights for employees in relation to the payment of their wages.

- **A right to a readily negotiable mode of wage payment,**
- **A right to a written statement of wages and deductions, and**

- Protection against unlawful deductions from wages.

Meaning of wages:

- Normal basic pay as well as any overtime
- Shift allowances or other similar payments,
- Any fee, bonus or commission,
- Any holiday, sick or maternity pay,

To bring a claim for unfair dismissal, whether to the Tribunal or Rights Commissioners, an employee must normally but not in all cases have at least one year's continuous service. However, there is no service requirement where an employee is dismissed for matters relating to trade union membership or activity or for exercising or proposing to exercise a right to adoptive leave, carer's leave, parental leave or force majeure leave or for exercising or proposing to exercise a right under the Maternity Protection Act, 1994 or under the National Minimum Wage Act, 2000.

