THE IMPACT OF THE UNFAIR DISMISSALS ACT, 1977 ON PERSONNEL MANAGEMENT AND INDUSTRIAL RELATIONS

Karl O'Connor*

The Unfair Dismissals Act, 1977 is unquestionably one of the most significant pieces of labour legislation enacted in recent times. The aims of the Act are to provide all employees, from manager to supervised employee, with greater job security through an institutional arrangement by which those who consider themselves to have been unfairly dismissed can pursue a claim for redress. The implications of the Act for employees have been detailed by Wayne (1980) in her guide to workers rights, while many of the implications of the Act for employers have been documented by Redmond (1980) and Hamilton (1981). However, there has not been any research on the effects which the Act has had in the work place. This study endeavours to go some way in meeting this shortfall; it assesses in broad terms the impact which the Act has had on personnel management and industrial relations practices with particular reference to the manufacturing sector.

Research Methodology

Two field studies were undertaken. The first involved a collation of the views of the lay members of the Employment Appeals Tribunal, of which there are fifteen nominated by the Irish Congress of Trade Unions and a similar number nominated by employers' organisations. Sixteen of these EAT members participated in the study, of whom nine were employer nominees and seven were trade union nominees.[1]

The second study involved a survey of manufacturing firms located in the Limerick and Shannon region. Eighty firms were randomly selected from an Industrial Development Authority directory of large and medium-sized firms and twenty-eight of these completed the postal questionnaires. Details of the respondent firms are contained in Appendix 1. The scope of the inquiry was constrained by limited resources and therefore only tentative generalisations are possible.

*The author is Training Officer with the First National Building Society, Dublin.

IBAR – Journal of Irish Business and Administrative Research, Volume 5, Number 2, October, 1983, pp 47-56.

Areas of Study

The research project examined several issues as follows:

(1) the extent of the impact which the Unfair Dismissals Act has had on management policies and practices;
(2) the effectiveness of the Act in stimulating the establishment and/or development of formal disciplinary/dismissal procedures within organisations;
(3) the effect of the Act on general personnel management practices;
(4) the time taken in processing E.A.T. cases and the consequent impact on industrial relations;
(5) the overall impact of the Act on plant-level industrial relations.

Management Policies and Practices

The studies reveal that the Unfair Dismissals Act has had a definite effect on management. All of the 16 E.A.T. member respondents were of the view that, on the basis of their general experience both as Tribunal members and practitioners, the Act has had a "big" or "very big" impact on management policies and practices during the first four years of it's operation. The reasons offered for this assessment varied. Not surprisingly, the main explanation of the nature of the Act's impact concerned the employer's need under the Act for substantial grounds before a dismissal would be deemed to be not unfair[2] (see table 1). Four employer members believed that the Act has underlined for employers the need for formal disciplinary/dismissal procedures.

Table 1: *Reasons why E.A.T. Members believe that the Unfair Dismissals Act has had a "Big"/"Very Big" Impact on Management Policies and Practices*

	Employer Members	Employee Members	Total
Employers need substantial grounds before dismissal deemed not to be unfair	1	4	5
Need for formal disciplinary/ dismissal underlined	4	–	4
Cost of compensation for an unfair dismissal	1	1	2
Need for greater care before dismissing employees	1	1	2
Limited management prerogative	1	–	1
Both sides of industry generally aware of Act.	–	1	1
N =	9	7	16

The manufacturing company respondents in our study on the whole indicated that the Act has had an impact on their management policies and practices, with twenty-two respondents stating that it has had an impact, while five dissented from this view.[3] The majority of those who viewed the Act as having had an impact considered that it has been "small". It should be noted, however, that each of the five company spokesmen, who initially indicated that their management policies and practices had not been affected by the Act, revealed in answer to more specific questions on the nature of the Act's impact, that some changes had in fact occurred, particularly in relation to general personnel management practices.

Disciplinary/Dismissal Procedures

The EAT in many of its determinations under the Act has highlighted the need for employers to have thorough disciplinary and dismissal procedures. These procedures help to ensure that employees are treated fairly and also that errors and disputes are minimised. It had in fact been one of the Minister's express hopes when introducing the Act, that it would help to stimulate the establishment or development of agreed disciplinary and dismissal procedures.[4]

These hopes appear to have been at least partially realised in that as we have already seen some of the Tribunal members considered the Act to have underlined the need for formal disciplinary/dismissal procedures in companies. Further evidence in support of this claim can be found in the manufacturing company study where nine respondents agreed that one of the main benefits accruing to their management as a result of the Act had been the fact that it had led to the establishment of procedures. A further eight company spokesmen indicated that they had benefitted from an improvement in their procedures as a result of the Act.

A factor which one would think, *a priori,* might help in the spread of formal procedures in organisations is section 14(i) of the Act which requires that all employers issue to new employees a copy of the company's dismissal procedures within 28 days of starting work. The procedures can be either agreed between the employees and employer or those established by custom and practice. Furthermore, all employees must be given a copy personally. However, nine Tribunal members on the basis of their experience as E.A.T. members and as practitioners concluded that, in general, new employees are not receiving copies of these procedures within the 28 day period specified. Three members believed the practice to be operating effectively, while the remaining

four members could not express a clear view on the issue. The reasons offered by respondents for the failure on the part of some employers to adhere to section 14(i) of the Act included the fact that employers often post the dismissal procedures on notice boards, the existence of poor communications between some employers and their employees, a lack of awareness on the part of the employers of this statutory provision and the inadequate attention paid by some employers to their human resources.

Twenty of the twenty-eight respondent manufacturing companies indicated that their new employees were receiving copies of their procedures. Two company spokesmen failed to answer this question and the remaining six companies admitted to not providing new employees with this information. Although the replies of the manufacturing companies – if faithfully reported – regarding their adherence to section 14(i) of the Act do not present as bleak a picture as that suggested by the Tribunal members, there is, nevertheless, cause for concern that some employers are not meeting this requirement. It is, after all, a fair employment practice and of benefit to both employee and employer that the new employee should, at least, receive a personal copy of the procedures to be adopted in the event of his or her dismissal.

General Personnel Management Practices

Because the Act restricts the employer's former unlimited freedom to dismiss at common-law it was considered reasonable to expect that general personnel management practices would be affected in some firms. The survey sought information on whether, or how, the following practices were affected:

Recruitment and Selection: Four of the employer members on the Tribunal were of the view that the Act had an impact on the recruitment and selection procedures operated in organisations resulting in employers (personnel managers/officers) exercising greater caution when hiring individuals.[5] Four respondents did not know if the Act had an impact on recruitment and selection procedures and one member believed that such procedures had generally not been affected by the Act.

Just over half the manufacturing companies indicated that they are now exercising "greater care" when recruiting and selecting employees as a result of the Act. The main ways in which recruitment procedures have been improved include the drawing up of more detailed job spcifications, the use of more comprehensive applications forms and

the drawing up of more detailed employee specifications. Selection procedures have been improved principally by more in-depth interviewing, the checking of references and the introduction of additional selection stages.

Employee Evaluation: The Act appears to have had an even bigger impact on manufacturing companies' employee valuation techniques than on their recruitment and selection procedures as nearly all the respondent companies indicated that they are now evaluating employees' work performances more carefully. The majority of the spokesmen stated that the work performances of "employees in general" are being evaluated with greater care while some respondents pinpointed employees with less than one year's continuous employment as being a special category warranting attention.

Record Keeping: As one might have expected, along with the more careful evaluation of employees' work performances there is a more detailed system of record-keeping of work performances and of work incidents evident, since the introduction of the Act.[6] All 16 E.A.T. respondents considered record-keeping to be generally more detailed than had previously been the case. Ten tribunal members viewed the Act as playing a "major role" in promoting more detailed record-keeping by management, while six members thought it had played a "minor role". The majority of the manufacturing companies confirmed that their records of work performances and incidents had become more detailed as a result of the Act.

Training: The responses of the employer members of the E.A.T. suggest that little attention is being paid to the training of either managers or supervisors in the implications of the Unfair Dismissals Act. In line with this scenario, the responses of the majority of firms in the manufacturing study reveal that the Act has had little impact on their level of training carried out. Only eight company spokesmen stated that the volume of training had increased in their organisations since the Act and all of these companies record that there is now greater attention being paid to induction training.

Managers in five of these companies are being trained in the implications of the Act while supervisors are receiving similar training in four of them. The low level of attention paid to management training is perhaps what one might have expected bearing in mind the Gorman et al (1974) study of Irish managers, which found that a sizeable number of managers in the firms surveyed had received little or no training in any area.

Levels of Recruitment: It had been argued by some employer groups prior to the introduction of the Act that some employers might become reluctant to take on new people due to the increased cost and difficulty of displacing them, should such legislative restrictions be enacted. There was, however, little evidence to suggest that the recruitment levels of the manufacturing firms surveyed had been affected by the Act.

Time Taken in Processing E.A.T. Cases

It was widely hoped that the Act would lead to an improvement in Irish industrial relations inasmuch as it was considered that accessability to the law would remove the aggrieved worker's need to engage in industrial action. In this regard it was intended that the E.A.T. would act speedily in its delivery of justice in contested dismissals. However, within a relativey short time of the Tribunal's handling of the Unfair Dismissals Act, there were signs that the E.A.T. was not hearing and issuing its findings as quickly as the Minister for Labour had originally envisaged.

In November 1978, Michael Bell, National Group Secretary of the I.T.G.W.U., in a public letter to the Minister, stated that many of his trade union members were encountering delays in having their cases heard owing to a backlog in the number of cases before the Tribunal. He noted that it took between three to five months to process cases and one consequence of this was that many of the claimants under the Act were being replaced in their jobs, leading to confrontation and disputes in employment. Improvements subsequently occurred and the time lag for hearing cases in October 1979 was down from 20 weeks to 14 weeks, largely as a result of vice-chairmen availability.[7] However, the E.A.T. annual report for 1980 indicates that the delay in hearing appeals has increased to approximately 18 weeks. The report notes that this increasing delay is the result of a 75% increase in the number of appeals referred to the Tribunal in 1980, the time taken to hear appeals under the Act and is also partly due to adjournments. Furthermore, the report reveals that the hearing time of such claims has also been extended largely because of the increasing involvement of the legal profession principally in claims under the Unfair Dismissal Act.

In this survey there was general consensus among Tribunal members that the length of time taken by the E.A.T. in hearing cases and issuing determinations was causing problems for both the employers and the employees concerned. The main problem identified by four Tribunal members related to the general uncertainty of the final outcome for both parties. It was pointed out that the employee was particularly

disadvantaged, with two respondents referring to the difficulty of dismissed employees obtaining new employment prior to their names being cleared before the Tribunal. Two other members mentioned the anxiety felt by employees during the long waiting period where they were seeking re-instatement. The dilemma faced by employers who had to decide whether to replace the dismissed employee or not while awaiting the outcome of the case hearing was also instanced by two Tribunal respondents.

General Plant Industrial Relations

In spite of the problems resulting from the slow administration of justice by the Tribunal and stemming largely, it appears, from the volume of its overload, the majority of the Tribunal members were of the view that the Act on the whole, has had a "positive impact" on plant industrial relations. Two E.A.T. members considered that it has had "no noticeable impact" and one employee member stated that it had a "negative impact" on plant industrial relations.

The Tribunal members who believed the Act to have had a positive effect offered a number of reasons for this assessment. They instanced the fact that the Act has helped to reduce the number of dismissal disputes,[8] that it had encouraged a more disciplined approach to dismissals (particularly through the use of formal disciplinary and dismissal procedures) and has helped to reduce the incidence of "push-button dismissals. The employee member who believed that the Act had a negative impact on plant industrial relations indicated that, prior to the Act, employers had been slow to dismiss for fear of retaliatory industrial action. He believed that employers now benefitted from the length of time taken in adjudicating cases, which amounted to what is in effect an enforced cooling-off period.

In the manufacturing company survey ten company spokesmen considered the Act to have had a "positive effect" on plant industrial relations. Eight spokesmen indicated that it has had both a "positive and negative effect" and seven respondents were of the view that it has had "no noticeable effect" on their industrial relations while two firms indicated that it had a "negative effect".

The beneficial aspects which respondents saw in the Act are listed in Table 2.

Table 2: *Ways in which the Unfair Dismissals Act has had a Positive Effect on Manufacturing Plant Industrial Relations*

	Size		
	20-250	251+	Total
Dismissal only used as a last resort	9	2	11
Disciplinary/Dismissal Procedures are better	5	2	7
Line Managers/Supervisors No longer take arbitrary action	6	1	7
Greater attention paid to Human Resources	4	2	6
Improved Job Security	3	2	5
Improvement in Employee Morale	1	1	2
N =	15	3	18

The negative effects which the Act has had on plant industrial relations (whether in part or on the whole) indicated by the company spokesmen are outlined in Table 3. It is interesting to note that only one of the large companies in the sample indicated a negative impact on its plant's industrial relations.

Table 3: *Ways in which the Unfair Dismissals Act has had a Negative Effect on Manufacturing Plant Industrial Relations*

	Size		
	20-250	251+	Total
Protects the incompetent from dismissal	4	1	5
Dismissal procedures too lengthy/slow	3	–	3
Managments' hands are tied by the Act	2	–	2
Employees can get away with more without fear of dismissal	2	–	2
Management authority undermined	1	–	1
N =	9	1	10

Four respondents who indicated that the Act has had no noticeable impact on their plant industrial relations considered the fact that they had a strong union at plant level was one reason for this. The possession of formal disciplinary and dismissal procedures prior to the Act's existence was a reason also given by four spokesmen (three from large companies) as a partial explanation for the Act's lack of noticeable impact. In short, the general picture emerging from both surveys is that the Unfair Dismissals Act has had a more positive impact on plant industrial relations than a negative one.

Conclusions

Although the Act was not introduced with the primary aim of helping management, our limited survey suggests that there have been many beneficial effects for management arising from the operation of the Act. It appears to have led to the tightening up of many personnel practices and in general contributed to the improvement of industrial relations. On the basis of the findings of this study the Unfair Dismissals Act is proving itself to be a welcome addition to Irish labour law.

REFERENCES

Employment Appeals Tribunal. *Thirteenth Annual Report, 1980.* Dublin. The Stationery Office.

Gorman, L., Handy, R., Moynihan, A., and Murphy R. *Managers in Ireland.* Dublin. Irish Management Institute. 1974.

Hamilton, D. "Employment Appeals Tribunal: Unfair Dismissal Act, 1977" *Lecture 130.* Society of Young Solicitors. April, 1981.

Redmond, M. "Justifying His Decision to Dismiss:The Employer's Role Under the Unfair Dismissals Act, 1977," *Journal of Irish Business and Administration Research.* Vol. 2, No. 2. October, 1980.

Wayne, M. *Labour Law in Ireland.* Dublin ITGWU/Kincora Press. 1980.

NOTES

1. All sixteen EAT members interviewed have wide-ranging work experience as trade union officials or managers and have also acquired considerable legal knowledge in their capacity as Tribunal members.

2. See section 6(i) of the *Unfair Dismissals Act, 1977.* Dublin. The Stationery Office.

3. A comparison between the two surveys is not possible as the EAT members' experiences relate to organisations of all sizes in industrial and commercial sectors.

4. See *Dail Reports.* Vol. 293. 4/11/1976.

5. Only the employer members on the EAT considered themselves capable of comment on many of these employment practices.

6. Poor time-keeping, use of abusive language, etc.

7. The chairman and vice-chairman offices are part-time.

8. The CSO strike/lock-out data for 1978 and 1979 reveal a drop off on the pre-1977 period in the number of disputes relating to engagement, dismissal, redundancy, etc, the numbers of people involved in these form of disputes and in the associated aggregate numbers of man-days lost.

Appendix One

Profile of Respondent Manufacturing Firms

Origin	Size (Employees) 20-250	251+	Total
Irish Owned	5	2	7
Irish and Foreign Owned	4	–	4
Foreign Owned	11	6	17
N =	20	8	28