

## **Redundancy – A trap for Employers**

In ADJ4328 the Adjudication Officer had to deal with a situation where an employee on lay-off gave a notice of intention to claim redundancy to the employer. The employee did not use the RP9 Form. The Adjudication Officer rightly pointed out that it is preferable that the RP9 Form is used. However, equally the Adjudication officer correctly pointed out there is no requirement under the legislation to do so. The Adjudication Officer pointed out that the employer in such circumstances must give a counter notice within 7 days of receipt of the request for redundancy.

An employee is entitled to claim redundancy where they have been placed on short time or lay off for more than four weeks. The employer, if they give a counter notice must do so within 7 days. That notice must provide that the employee would be provided with 13 weeks continuous employment within four weeks of the counter notice.

In the particular case the employer received a notice but did not respond within the 7 day period of time. The Adjudication officer therefore, in our opinion, correctly held that the employee was entitled to redundancy.

Under the Redundancy Payment Act there is no provision for an extension of time for the employer to give a counter notice. It is therefore important that employers who receive a request for redundancy respond immediately if they intend to give a counter notice failing which the employee will automatically become entitled to a redundancy.

In another case under ADJ1190 the Adjudication Officer had to deal with a situation where the employer claimed that there had been a transfer under the Transfer of Undertaking Regulations, commonly called TUPE. This is a defence to a claim for redundancy. The Adjudication officer in this case which is one which is interesting went though the history of what happened when the business closed down and found that there had been no transfer under the Transfer of Undertakings. Therefore the Adjudication Officer held that the notification of termination of the employment was simply a notification of termination of the employment which entitled the employee to claim redundancy.

If an employer is going to be relying on the defence that there is a transfer under the Transfer of Undertaking Regulations to a claim for redundancy it is important at the time that the transfer is taking place that the employer ensures that the appropriate notifications are sent advising the employees that a transfer is going to take place under the said Regulations.