



July 7, 2023

## QUBE MANAGEMENT ARE COWARDS!

### FACTCHECK

QUBE's Newsflash of 6 July 2023 to its employees tries to shift blame for a cowardly bargaining backflip (orchestrated by Dan Coulton to cover up his own mistakes) to the RTBU – let's review what really happened.

#### What is the 'hourly rate' dispute?

The RTBU alleges that QUBE's practice of assuming the rates in the enterprise agreement are 'all-up' rates has resulted in a significant underpayment to employees. Our position is that clause 4.2 of the Enterprise Agreement, which defines 'hourly rate', does not indicate that the rates in the agreement are 'all-up' rates.

As such the RTBU alleges QUBE employees are entitled to penalty rates for working afternoon, early morning, night shifts and weekends, and are entitled to be paid other shift allowances. This results in a significant underpayment for every QUBE employee, which may be worth up to about \$30,000 per employee per year for the past 6 years, and \$30,000 every year moving forward.

#### Did QUBE know about the 'hourly rate' dispute?

Yes, QUBE knew about the 'hourly rate' dispute and has known since February 2023. QUBE dismissed the dispute as being of no importance, because in their opinion the RTBU was clearly wrong about clause 4.2. If the RTBU is so 'wrong' why has QUBE spat the dummy so dramatically now?

We have **attached** to this Newsflash an email from Dan Coulton to Peter Matthews (RTBU Legal Officer) discussing clause 4.2 being changed from 1 March 2023.

#### Did QUBE know about the Federal Court proceedings before agreeing to the new EA?



Yes, QUBE had a copy of the filed Federal Court proceedings, **before** they agreed to the bargaining outcome achieved on Monday. They reviewed the documents, indicated that they were no barrier to agreement, and agreed to the bargaining outcome.

### **How did the RTBU become aware of the underpayment?**

The RTBU will occasionally undertake a review of some of the hundreds of enterprise agreements that apply to its members. This is an onerous task, that involves reading the agreement, and comparing it to working rosters, hour sheets, and pay slips to ensure that everyone is being paid properly.

It was in this process that we discovered the underpayments – the RTBU had previously assumed that QUBE employees were being paid correctly. Instead, we found widespread **wage theft**.

### **QUBE refers to ‘existing arrangements’ what are they?**

The ‘existing arrangement’ that QUBE refers to, and is trying to garner employee sympathy for, is actually a chronic and systemic practice of underpayment and wage theft that has robbed employees of tens of thousands of dollars each year.

Whilst QUBE has probably stolen millions of dollars from their employees, they have still paid millions of dollars to their directors in the same period – that’s the ‘existing arrangement’.

### **Can QUBE delay the new EA by 12 months?**

No, you will have a new agreement, whether QUBE likes it or not, well before 12 months.

### **QUBE says it will vary the 2015 and 2019 EA’s – what does this mean?**

QUBE can apply to vary existing agreements to weasel out of an underpayment, but it is unlikely to work. QUBE constantly runs and loses these types of cases because they are frequently accused of underpaying their employees. It is nothing more than a stalling tactic.

### **Why is this all happening now?**

Clearly QUBE have received legal advice recently, probably indicating that the RTBU case against them is very strong, and instead of accepting they have been underpaying employees, they are trying to extort a settlement out of the bargaining process by holding the EA to ransom and doing everything they can to keep the rort going.



# RTBU NSW

LOCO  
DIVISION

# NEWSFLASH

## What happens next?

The RTBU will engage with the Fair Work Commission process to try and enforce the original agreement.

Otherwise QUBE members have approved industrial action that will assist in bringing a resolution about sooner rather than later.

The Federal Court case will proceed. Remember only RTBU members will be included in any settlement, which clearly is worth a lot of money!

**In the meantime, you can contact Dan Coulton and let him know you wont be bullied out of your EA guaranteed entitlements!**

## Not a Member, Join Now



**If you have any questions about joining,  
please contact the RTBU Head Office on (02) 9264 2511.**

## Peter Matthews

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**From:** Dan Coulton  
**Sent:** Wednesday, 1 March 2023 11:36 AM  
**To:** Peter Matthews  
**Cc:** Steve Ellem; Kevin Pryor  
**Subject:** FW: E.A Update  
**Attachments:** Compare - First Draft 250822 to 230223.pdf

**Importance:** High

Dear Peter

We confirm receipt of the Form F32 filed with the FWC yesterday and refer to your earlier email yesterday afternoon sent at 1:27pm.

### Your email

Qube has considered the allegations in your email and maintains its previously communicated position that all material changes (including those under the heading of clause 4) have been discussed at both bargaining meetings and in our various communications with the RTBU during the course of bargaining.

As previously explained to the RTBU, the relevant change to clause 4.2 was simply to replace the previous clause with a simplified inconsistency clause and to avoid unnecessary duplication. We do not understand your query “*where else in the agreement does it say award loadings and penalties apply to EA rates?*” given that loadings and penalties are dealt with in the Award which is wholly incorporated through the operation of clauses 4.1 and 4.2 in the proposed draft (with the agreement terms prevailing to the extent of any inconsistencies). Specifically, the current draft of the proposed agreement already provided to the RTBU provides as follows:

- 4.1 This Agreement wholly incorporates the Rail Industry Award 2020 as varied from time to time (Award), except for the *Award Flexibility* and *Facilitative Provisions* clauses.
- 4.2 Where there is any inconsistency between the Award and this Agreement, the terms of this Agreement shall prevail to the extent of such inconsistency.

As you would be aware, the Award provisions with respect to loadings and penalties are incorporated into the proposed agreement (as they are under the current agreement) in circumstances where the enterprise agreement is silent on loadings and penalties. In any event, as this was just to simplify the existing arrangements rather than change the substantive meaning, Qube is more than content to simply reinstate the previous clause 4.2 to address the concern.

In terms of a comparison document, notwithstanding all material changes have either been discussed in the various bargaining meetings and/or via various email correspondence and we fail to see how the RTBU has evidently failed to itself to keep across these changes, please see **attached** a full comparison document. Again, there has been nothing other than complete transparency notwithstanding the RTBU’s own failure to stay across of the current proposed status of the agreement. The compare document compares the draft agreement as at 25 August 2022 (that Kevin Pryor initially provided) with the latest agreement as at 24 February 2023 (the pdf I have already provided to you), noting the only addition will be the reinstatement of the previous clause 4.2 wording to address the RTBU’s concern.

We trust that these steps now fully address the RTBU’s concerns on these issues.

### RTBU’s application for a bargaining order

Qube is otherwise of the view that the RTBU's application for a bargaining order is entirely vexatious, unnecessary, and lacking in good faith in coming as it does at 'one minute to midnight'. The application is also premature as to the issues you raise given it was filed less than 3 hours after your last correspondence in circumstances where the parties were actively engaged in correspondence on these issues and Qube was not afforded an opportunity to address your latest correspondence, noting the overlap in issues between your email at 1:27pm yesterday and the application filed just a few hours later. Based on recent correspondence that has been sent out by RTBU delegates, we are also now very concerned that your application may have been made for ulterior purposes to delay commencement of the access period and vote in respect of the proposed agreement constituting unfair or capricious conduct that undermines the collective bargaining process. Qube reserves all of its rights in this respect.

Regardless, Qube has now fully addressed the material relief sought in your application currently before the FWC and reserves its right as it is statutorily entitled (and mandated) to proceed to an access period and vote.

In light of the above, we invite you to urgently withdraw your application by no later than 5pm AEDT today (1 March 2023) and confirm that this correspondence will be provided to the Commission on the question of remedy and costs if the RTBU's application is pressed.

We look forward to your urgent reply and confirmation that the application has been discontinued. Please contact me should you wish to further discuss.

Regards

Dan

Dan Coulton

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