



# RTBU NSW LOCO DIVISION NEWSFLASH

August 5, 2024

## QUBE LOSE AGAIN

### REPORT ON FULL BENCH DECISION

The Locomotive Division is pleased to report that a decision has been handed down dismissing Qube's appeal against the decision of Deputy President Cross – who refused Qube's s217 application to vary the 2015 and 2019 Enterprise Agreements to stifle our claim for award loadings, allowances and penalty rates.

That decision was to, once again, dismiss Qube's attempts to vary its Enterprise Agreements.

The 25-page judgment is [available to view here](#).

The Full Bench decision is notable for its comprehensive and detailed reasons that outline the serious deficiencies in Qube's factual case. Members are encouraged to read the analysis at paragraphs [54]-[69] that detail 10 key elements of the evidence that made it impossible to accept Qube's case.

With the dismissal of this appeal, Qube's attempts to vary the text of the 2015 and 2019 Agreements in the Fair Work Commission have been exhausted.

Qube may attempt to seek Judicial Review of this decision in the Federal Court, but to do so will need to overturn the Full Bench decision as being infected by jurisdictional error - a challenging and perhaps impossible hurdle.

Otherwise, Qube will have to come to terms with the clear and unequivocal language of the previous and current Enterprise Agreements, that undeniably creates an entitlement to award penalty rates, shift loadings, and allowances.

**Where to next in the underpayment claim?** – Qube has a very narrow path to defeat the underpayment claim. The proceedings in the Federal Court had been stayed pending the outcome of this appeal. Absent further delay by Qube, those proceedings will now resume and can be programmed to a hearing.

**Where to next in bargaining?** - We will meet again Qube again to continue bargaining on 9 August 2024 at Newcastle before Deputy President Saunders.

Deputy President Saunders made it very clear that, without serious movement on wages, this could be the last meeting before he will report back to Deputy President Wright where a determination will be made on the RTBU's Intractable Bargaining Application.



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