



September 9, 2024

QUBE EA UPDATE

Vote “No” to a dodgy deal.

Tomorrow Morning at 6am, Qube’s Enterprise Agreement opens for voting. There is only a short window for employees to vote with it closing at 6pm on Wednesday night. The agreement sent out is not endorsed by the RTBU and all members should **vote early and vote “NO”**.

In addition to the pay-offer, the RTBU does not support the proposal, for the following reasons:

Sneaky wording of clause 4.2

Qube has proposed changes to clause 4.2 of the agreement. The change proposed was not agreed with the Union, and let us be clear, we would not have agreed to it. We will let members decide if they are comfortable with Qube’s proposed changes, the underlined sentences in the table below show the significance of the change to clause 4.2.

Clause 4.2 in 2015 and 2019 EAs	Proposed clause 4.2 in Qube’s dodgy deal
<p>Upon incorporating Award terms into the Agreement, the incorporated Award terms are to be read as altered with the appropriate changes to make them provisions of the Agreement rather than provisions of the Award. <u>So, for example, the loadings, penalties and allowances in the Award apply to the rates of pay due under the Agreement, rather than the Award rates.</u></p>	<p>Upon incorporating Award terms into the Agreement, the incorporated Award terms are to be read as altered with the appropriate changes to make them provisions of the Agreement rather than provisions of the Award, <u>save that the loaded Hourly or Normal Rates in this Agreement continue to include and offset any shift/weekend penalties or loadings and any allowances, otherwise payable under the Award (including as incorporated), unless the terms of this Agreement expressly provide otherwise.</u></p>

This is explained in Qube’s Explanatory Document under item 4 –

*“Clause 4.2 of the Current Agreement has been amended in the Proposed Agreement **to confirm and clarify existing practice with respect to the payment of the rates of pay** (i.e. that the rates of pay are loaded rates, which are intended to be paid in compensation*



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for any weekend or shift work, annual leave loading or any allowance that is otherwise payable under the Rail Industry Award 2020 (Award).”

However, this explanation is misleading, as Qube has **twice** lost its argument that its ‘existing practice’ of not paying penalties and allowances is permitted under the 2015 and 2019 Enterprise Agreement. Whilst Qube may tell its employees that loaded rates were always *intended* to compensate for all penalties and allowances under the Award, the fact is they were unable to prove this where it mattered.

This is what the Full Bench had to say about Qube’s attempts to prove a common intention that rates in the Qube Enterprise Agreements were loaded rates:

Mr Coulton’s own evidence was ... by itself, destructive of the proposition that there was a common intention that clause 4.2 would not operate in accordance with its terms.

In addition to opposing the introduction of a loaded rate on Qube’s pay offer, we are concerned that Qube may use the wording ‘rates in this Agreement **continue to** include and offset any shift/weekend penalties’ to support their argument that the 2015 and 2019 Agreement paid loaded rates. By implication of using the word *continue*, we’re concerned if you vote yes for this EA, then you accept Qube’s interpretation and agree that your previous EA’s have Loaded Rates.

Significant changes of uncertain effect

Qube has also made other wholesale changes that are poorly explained and could have a significant effect on your pay and conditions – **remember if you don’t know vote “no”**.

Clause 4.5 – over-award payments

Clause 4.5 in the 2019 EA reads as follows:

Existing over-award payments and conditions of employment shall also continue to apply as if they were an express term of this agreement, except where the terms of this agreement expressly provide otherwise.

This clause has been entirely deleted by Qube, and the only explanation offered is ‘consolidated and simplified’. We are unsure if employees currently enjoy any over award payments that are not expressed in the EA that need protection, but sometimes we find that employees have arrangements as to the circumstances in which they can claim standalone over time for shifts that are outside EA parameters.

Such arrangements may be affected by this change, and this change was not discussed in bargaining.

Clause 5.2 – Off-setting

Clause 5.2 in the 2019 EA reads as follows:

*No entitlements as contained in this Agreement, or over-Award payments and conditions of employment, shall be used for the purpose of setting off any other term of this Agreement **or Award**.*

Qube has deleted the last two words of the clause. We’re uncertain as to the actual effect of this deletion, but it appears to have a broad effect allowing Qube to weasel out of any Award *payments or conditions* by arguing they can be offset against payments made under the EA. This would completely erode any protection Qube employees get from the Award, including current and future protections that are not found in the EA like the new Right to Disconnect. Again, this change was not discussed in bargaining.



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Clause 8 - Redundancy

Qube has changed the Redundancy Clause without advising your EA Delegates or your RTBU Locomotive Division.

1. Clause 8.2(a):
 - a. now **'take all reasonable steps'**
 - b. was **'all possible steps'**.
2. Clause 8.2(b):
 - a. now Qube shall hold discussions with **'impacted employees'**
 - b. was 'locations affected'
3. Clause 8.2(c):
 - a. now **'notify the impacted employees on suitable alternative employment and shall call for expressions of interest'**
 - b. Was 'call for expressions of interest'.

Whilst these changes are somewhat uncertain, it appears these changes would allow Qube to undertake less consultation, artificially limit the opportunities for voluntary redundancy, and allow managers to more easily target individuals for compulsory redundancy termination.

This change was not discussed in bargaining.

Clause 34.4 - cancelled Shifts

Qube, in its explanatory materials, discloses the following change:

Deletion of the following requirement "No work can be given after cancelling a shift for 17 hours which is the length of time a minimum shift engagement and rest period unless by mutual agreement. If work is required within this 17 hour period, lift up or lay back (34.5) provisions will apply".

Again, there has been no consultation with your EA Delegates, nor your RTBU Locomotive Division to change the requirements for new work after cancelling a shift.

We couldn't find the corresponding change in the EA, but the disclosure cannot be ignored as it may trigger further litigation from Qube in the future alleging some other "Common Intention".

Combined with the deletion of clause 4.5, it appears Qube are intending to have employees work more for less.

The issue of pay

Our last newsflash dealt with the issue of pay, which is a subpar offer even before you consider all the sneaky changes discussed here.

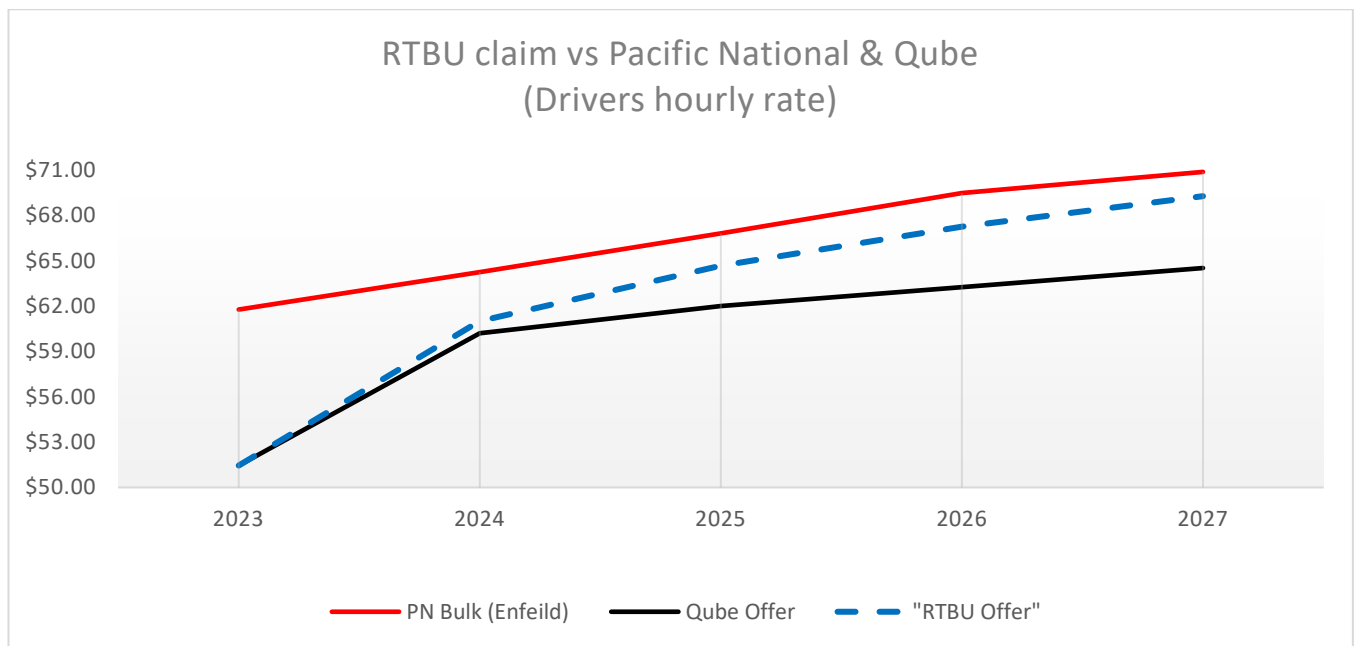
Qube issued its own communication last week arguing that the Union's pay claim was close enough to Qube. Obviously enough, this is not true.



In a last-ditch attempt to reach an agreed position and secure fair pay rises, the Union's **final and one-time offer** beat inflation, closed the gap with Pacific National, and did not accept the sneaky changes identified above. The RTBU was proposing a final rate at the end of the EA for Drivers of just under \$70ph.

If the offer was 'close enough' then why wouldn't Qube just agree to it?

The below chart tells you all you need to know about the Unions *very fair* offer.



Remember to vote early and Vote "NO"
Not a Member, Join Today



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