



October 17, 2024

## QUBE Legal Update

### **Underpayment Federal Court**

Yesterday, we were listed before the Federal Court of Australia for an interlocutory hearing of Qube's Stay Application which was filed on 9 September 2024. While Qube was pressing that this matter be delayed until its Judicial Review application is heard and determined, or in other words 'indefinitely', the Federal Court made Orders which has finally put a timeline on the massive underpayment claim brought on by your Union.

The Orders are as follows:

- A case management hearing on Friday 4 April 2025
- Evidence and Submissions due throughout July and August 2025.
- The matter is listed for hearing for 4 days starting on Monday 8 September 2025.

It has been a long time coming, and we now have a timeline to see this claim wrapped up.

### **Intractable Bargaining**

The Intractable Bargaining hearing is set down in just 3 more weeks on Thursday 7 November 2024 in Sydney. This will be the final chance for oral evidence and closing submissions before the Fair Work Commission will decide whether to make the Intractable Bargaining Declaration. If the declaration is made, bargaining concludes at that point, and the matter is sent to the Full Bench of the Fair Work Commission where they will determine the outcome of your Enterprise Agreement, noting that no conditions can go backwards in this process. Given the limited number of issues in dispute, we're hopeful this process will occur quickly.

### **Variation Judicial Review**

Qube's application to the Federal Court for Judicial Review of the Full Bench decision not to vary the 2015 and 2019 Enterprise Agreements will be listed for hearing in March 2025.

We have some good news to report in this regard.

Just this morning a Full Bench of the Federal Court in another Qube application seeking judicial review of a s217 variation dismissal has found Qube Ports lacked standing to retrospectively vary replaced enterprise agreements, clearing the way for the MUA to pursue the stevedoring giant for millions in allegedly wrongly-deducted "gap" payments from up to 1000 wharfies' remuneration.

Does this sound familiar? Not only are Qube underpaying Train Crew in NSW by not paying weekend and shift penalties, plus other entitlements covered by the Rail Industry Award, but they have been ripping off wharfies as well. The MUA's multi-million-dollar underpayment claim is set down for a first case management hearing before the Federal Court on November 13, 2024, and will likely be listed for hearing sometime next year. Once again Qube will be rolling out its tired and ineffective argument that the



enterprise agreement it struck with the MUA's hard-working wharfies doesn't mean what it says due to some undocumented 'common-intention'.

However, for our underpayment claim, the MUA's hard-fought victory means that Qube will never be able to vary it's NSW 2015 Enterprise Agreement. This means at least part of the RTBU Federal Court underpayment claim will be determined, no matter what happens to Qube's increasingly unlikely variation application and application for Judicial Review.

Remember, the RTBU is only fighting for RTBU Members in all 3 matters listed above.

**Not a Member, Join Today**



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