



## ASU takes Qantas to Federal Court over Jobkeeper penalty rate wage theft

Early on the morning of 23 July 2020, the ASU filed an application in the Federal Court seeking declarations, back pay and penalties against Qantas for breach of the JobKeeper Minimum Payment Guarantee (S 789GDA of the Fair Work Act). The ASU is working with the TWU and FAAA, who also involved in the case.

### What is the case about?

Qantas says calculates the JobKeeper top-up by looking at what an employee has been paid in a particular JobKeeper fortnight. If the amount is less than the \$1500 minimum payment, they top it up so the employee is paid \$1500.

We say this is in contravention of the Fair Work Act which guarantees that employees will be paid either the \$1500 or 'the amounts payable to the employee in relation to the performance of work during the fortnight' in each JobKeeper fortnight.

As members know, the Qantas Payroll fortnight (Wednesday to Tuesday) is different to the JobKeeper fortnight (Monday to Sunday). Worse, Qantas delays paying shift penalties and overtime from the last week of the Qantas Payroll fortnight until the next pay day.

This means that Qantas needs to look at when money was earned, not when it was paid, to calculate the JobKeeper fortnight. This means looking at up to three different pay cycles.

This means some employees have lost money when penalty rates and overtime from one pay period are paid in the next pay period and Qantas offsets that amount against JobKeeper.

### What are we asking for?

We are asking the Federal Court to make a 'Declaration' interpreting s 789GDA of the Fair Work Act. This means that the Federal Court would tell Qantas that their interpretation of s 789GDA is wrong.

Two ASU members have volunteered to be example cases. We are asking the Federal Court to order Qantas to backpay those employees for the penalties this missed out on.

We're also asking the Court to order civil penalties against Qantas for their deliberate contravention of the Act.

### What happens if we win?

If we win our case, we will be calling on Qantas to accept the court's decision and back-pay all underpaid employees. We will keep you updated on how this progresses.

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