



JobKeeper: Qantas appeals Justice Flick's decision; the ASU keeps fighting for fairness!

On 9 November 2020, a Full Court of the Federal Court heard Qantas' appeal of Justice Flick's decision interpreting the JobKeeper Minimum Payment Guarantee (s 789GDA). In October, Justice Flick had made a declaration interpreting the minimum payment guarantee that would have made Qantas' payment practices unlawful. Qantas appealed the decision.

The ASU was represented by barristers Mark Gibian SC and Phillip Boncardo. They explained to the Full Court that the ASU's interpretation was the best interpretation because it was both the simplest reading of the words of the Fair Work Act and the most consistent with the purposes of JobKeeper scheme.

The Court has reserved its decision, meaning they are considering the parties' submissions and will make their decision later.

We will update you when the Full Court issues its judgment.

SPG Bonus & JobKeeper Minimum Payments

Members have complained to us that Qantas has absorbed the SPG bonus payment into JobKeeper minimum payment if the employee is stood down. This has caused wild disparities in payment between SPG's who worked in that fortnight and SPGs who were stood down.

If you worked in the fortnight the bonus was paid, you would have received your pay plus the bonus. If you didn't work, you were paid the bonus but it was absorbed into the minimum payment.

This clearly isn't fair! We are waiting on the outcome of the JobKeeper appeal before deciding our next steps. If the Full Court sides with Qantas' appeal, their actions are probably lawful. If the ASU's interpretation is correct we may have a case arguing the bonus should have been paid on top of the minimum payment

guarantee. We will consider the judgment of the Full Court before advising members further.

Accrual of RDOs during stand-down: Qantas won't admit it did the wrong thing

The ASU wrote to Qantas on 30 October about the recent deletion of 20th days accrued by stood down employees. Qantas says the employees were never entitled to the 20th days because they weren't working at the time.

This is probably a fair reading of the EBA. 20th days are earned by working additional time for the same pay as a regular 38 hour working week. This doesn't happen when the employee is stood down and is only paid the minimum payment guarantee.

But Qantas should have made sure that its pay records were accurate from the start of the stand downs! Further, it should have consulted with affected employees before making the change.

Members should be able to rely on the pay records provided by the company.

Pass this bulletin to your friends at Qantas who aren't ASU members. They can join at www.asu.asn.au/ASUJOIN.

Got a question?

And remember your ASU is with you every step of the way. If you have any further questions, please contact your ASU organiser:

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