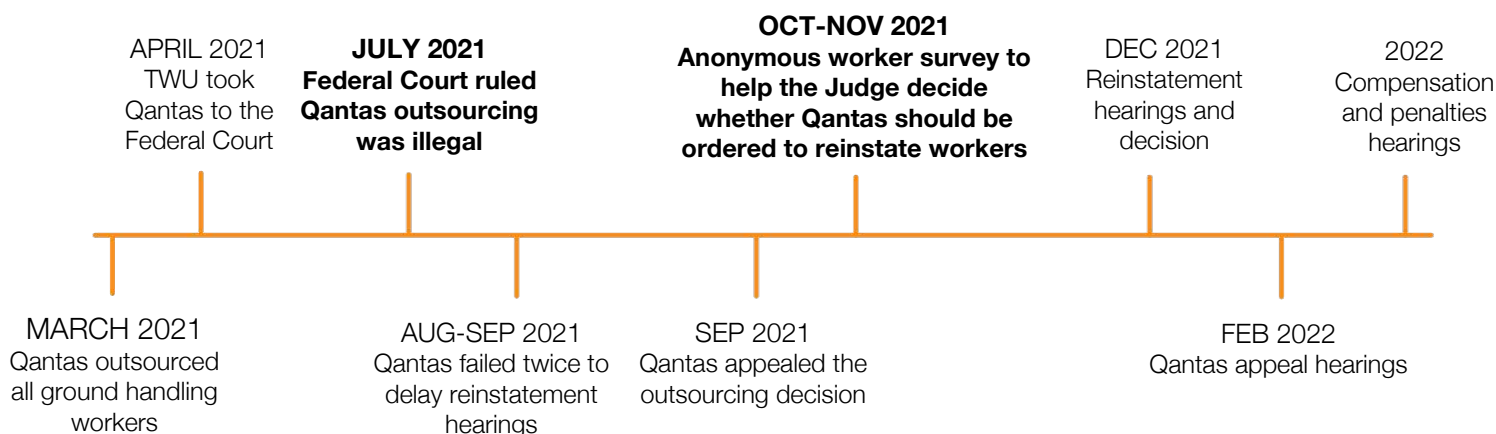


Timeline of events



Remedy hearings and survey

With respect to General Protections claims, this will be the biggest remedy decision ever in Australia with 2000 employees involved. To help the Judge reach a decision on reinstatement, workers who were outsourced are being surveyed by the Social Research Centre, with the following options:

1. reinstatement and compensation
2. compensation only

This survey is voluntary and anonymous. It will be used as evidence in the Federal Court to indicate to the Judge how many people want to be reinstated to assist the Judge in deciding whether to make orders for reinstatement.

If you choose reinstatement on the survey and the Judge makes orders for reinstatement but you no longer want to be reinstated, you will not be forced to return to work. The court will then consider how much compensation you should be awarded.

The TWU is seeking four separate remedies for our members:

- First, we are seeking reinstatement. Reinstatement is the primary remedy if you have been unlawfully terminated. For those members that want to be reinstated, we are also seeking compensation for loss of income up to their reinstatement.
- Second, for members who do not want to be reinstated, we are seeking compensation for loss of income since termination and into the future.
- Third, for all members (whether you choose reinstatement or not), we are seeking compensation for non-economic loss. If the decision by Qantas to terminate you has affected your mental health, we are asking that you are compensated for this.
- Finally, we are seeking penalties against Qantas for the action it has taken against each of you.

In order to give workers more certainty over their lives, the reinstatement decision will be made first, with a hearing starting on 13th December. The Judge has indicated his intent to reach a decision before the end of 2021.

Compensation and penalties will be determined at a later date. Please also note that Qantas' appeal of the outsourcing decision is scheduled to be heard in February 2022.

Q&A

I haven't received the survey?

Please wait until 4th November. If you have not received a link to the survey by 4th November, and you believe you are involved in this case, please contact the TWU on 02 8114 6500 on 4th or by midday 5th November and provide your details. You should then receive the link **on 7th November.**

What does reinstatement look like? Who will my employer be? Will I still be covered by the same enterprise agreement? Will I be full time or part time?

If reinstatement orders are made and you want to be reinstated, you will be reinstated to the same position you were in immediately prior to your termination. This means you will be employed by either QAL or QGS (depending on who previously employed you), you will be covered by the same enterprise agreement that covered you during your employment and you will work the same hours you were contracted to work prior to your termination.

Reinstatement should look like you were never terminated.

What if I choose reinstatement in the survey and the court makes orders for reinstatement but I no longer want to be reinstated because my circumstances have changed?

If you choose reinstatement in the survey and the Court makes orders for reinstatement but your circumstances change or you change your mind after you complete the survey, you will not be forced to return to your old job and can instead opt for compensation only.

If I choose reinstatement, will my annual leave, long service leave and personal leave be recredited?

The short answer is yes. However, we are still in discussions about what this might look like. For those members who were paid their accrued annual leave and long service leave upon termination, and who choose and are granted reinstatement, the two possibilities are 1) upon reinstatement, you pay back the amounts you were paid in lieu of leave entitlements upon termination and your leave accruals are recredited or 2) you keep the amounts you received in lieu of leave entitlements and start accruing from scratch upon reinstatement. We will keep you updated on this.

If I choose reinstatement in the survey but the court decides not to make reinstatement orders, will I then receive full compensation?

Yes. In these circumstances, the court will assess how much compensation you should be paid for loss of income since your termination and into the future.

What if I choose reinstatement, the court grants me reinstatement and then Qantas make me redundant again?

Any decision by Qantas to make you redundant again shortly after or before your reinstatement will be a breach of the court's orders.

Further, as you will be reinstated to the same position you were in prior to your termination (together with a recognition of the continuity of service), Qantas will likely have to (for example) reengage its managers and reinstate its previous operations as they were prior to your termination – in other words, reverse its decision. It would make little sense for Qantas to then make you redundant again once it has gone to this effort.

For avoidance of doubt, you would be entitled to a redundancy package based on your years of continuous service as a result of any unlikely decision by Qantas to make you redundant.

If I choose reinstatement, will my superannuation defined benefit be reinstated?

Whether you will be able to be part of your defined benefit scheme will depend in part on the rules of your particular defined benefit scheme. If you are not able re-join a defined benefit scheme, we will argue that you should be compensated for the loss of this benefit.

Is there work for us? Do we want to go back to a company that have shown they don't want us?

Whether there is sufficient work to be performed in order for you to be reinstated is not ordinarily a matter that the court has considered in any previous related decisions to reinstate workers. Qantas may use this as an argument against reinstatement, however, flights are resuming and will increase over the coming months and years.

Whether you want to go back to your job is ultimately a matter for you. That said, the best way to seek justice for your unlawful termination is to be reinstated. You are entitled to be reinstated and to return to your job.

I heard the Judge make comments about QGS employees not being involved in the remedy hearing. Is this true?

No. QGS and QAL employees who were forced to take redundancy between November 2020 and March 2021 are all involved in the remedy hearing. The way the legislation is worded meant that we had to take an extra step in joining QGS as a party to the proceeding. This has now been done.

Why does the decision apply to non-members and why are the TWU's solicitors sending the remedy survey to non-members too?

This case was about why Qantas chose to make the decision to reject the in-house bid and terminate you. As Qantas' decision affected all employees, the case affected non-members too.

In terms of remedy, whether the court will grant reinstatement will depend on (amongst other things) how many people actually want to be reinstated. This means that it will be important to make sure we have everyone's preference recorded – even non-members – so that we know exactly how many people want to be reinstated to ensure those members who want reinstatement have the best chance of getting reinstated. The survey is being conducted independently by the Social Research Centre and responses will be anonymous when provided to the court.

Where do people on workers' compensation sit in choosing remedy options?

If you are receiving workers' compensation payment, you should consider your remedy options in the same way as other members.

The court will consider issues of compensation for workers who were on workers' compensation in the same way as with other employees. However, your loss may be calculated to be less due to your inability to work and earn an income.

If you do not have any ability to return to work, then it is likely that the court would not order reinstatement.

I took a voluntary redundancy in August 2020 as I felt I never had a choice. Will I be reinstated or awarded compensation?

Unfortunately, the court's decision only applies to those workers who were made compulsorily redundant as a result of the outsourcing. We appreciate some workers felt they had no choice but to accept voluntary redundancy before the outsourcing was announced. However, the court's decision is clear and cannot be changed.

If I was redeployed to Qantas Freight or elsewhere in Qantas, will I be sent the court survey? Can I choose reinstatement?

You should receive the court survey and you will be able choose your preferred outcome like other workers affected by Qantas' decision to outsource. If you choose reinstatement, we will be arguing that you should be reinstated to the position you held prior to and irrespective of your redeployment.

Qantas has lots of money stashed away out of the public eye. It was Qantas' fault that it made the decision to terminate us illegally – they should be penalised. So, why should we have to pay back our redundancy payment?

Unfortunately, the amount of money Qantas has is not a consideration for the court in determining how much compensation to award you. On the other hand, the court will consider any income you received since you were terminated. Redundancy payments are considered income for these purposes because redundancy payments are paid to employees in anticipation of the loss of income they may experience for a period of time while they search for another job. Having reviewed previous cases on remedy in this area, we do not think there is any way around this. However, you are reminded that we are asking for continuity of service so you will receive your full redundancy entitlement if you are made redundant again. You are also reminded that we are seeking penalties against Qantas separately for its behaviour.

All I want is to be compensated. If we win reinstatement and I don't go back, will I get nothing?

If the court makes orders for reinstatement, you will not be forced to return to work. Compensation for all workers, whether or not they want to be reinstated, will be determined at a later date.

Will I be compensated for loss of superannuation in any decision to award me compensation?

Yes.

What kinds of things will be considered when the court decides how much to award me in compensation for loss of income?

In broad terms, the court will consider:

- the amount of income that you would have earned if your employment had not been terminated;
- the amounts of income that you have received after your dismissal;
- amounts that you have received due to the termination of your employment (notice and redundancy pay)

If the court makes orders for reinstatement and you do not want to be reinstated, it is important that you know that Qantas has indicated that it will argue that, by not wanting to be reinstated (and wanting compensation instead), you did not try to reduce the effects of the termination on yourself including the lost income you will likely experience. This may mean you end up with less compensation than what you expected to receive.

If I pick the wrong option, the case could end up in court for years and years and that isn't any good for anyone.

There is no wrong option. You should decide on the option that most suits you.

As you know, Qantas have already appealed the decision which will be heard in February 2022. It is for this reason that we have been arguing in court on the last few occasions for the Judge to make a decision about remedy as soon as possible, to give our members certainty.

The preferences that you indicate in the survey with respect to remedy will not affect how long the case ends up in court. If the court ultimately makes an order for reinstatement and you want to be reinstated, it is possible you may not be back at work until after the appeal hearing is determined (this will depend on whether Qantas gets an order that temporarily postpones (or "stays" that order).

Dates have not yet been set for compensation hearings, which may take place after Qantas' appeal is heard in February.

There is also the possibility that, if Qantas lose its appeal, they will appeal again. This may delay reinstatement (and compensation) further but it will not matter which option you choose.

****If your question is not answered in this document please contact your delegate, or otherwise your TWU branch: www.twu.com.au/contact****