



RTBU
NSW BRANCH

How did we get here?

Sydney & NSW Trains Enterprise Bargaining 2021-2 & the New Intercity Fleet

An explainer for RTBU members

1. In 2015, the New Intercity Fleet was ordered by the NSW Government as a “Driver Only” train meaning that it was operated by the Driver without another person responsible for safety on board and relying solely on the CCTV system which has been proven as flawed by an independent expert and the manufacturer of the train themselves.
2. On 22 October 2018, after consistent pressure from the union, Andrew Constance announced that there would be a Guard on the train doing what they did today and ordered the train be altered to allow that to happen.
3. **First backflip** - In March 2019, the NSW Government won the state election, and Andrew Constance backtracked on his commitment and ordered that the train not be altered to allow Guards to perform their duties.
4. In November 2019 NSW Trains attempted to unilaterally introduce the changes required to operate the NIF by increasing the duties of intercity drivers via a new classification in the Enterprise Agreement, paying a wage increase to drivers, and reducing the wages and duties of guards. This proposal was defeated by the RTBU in the FWC.
5. In April 2021 NSW Trains again attempted to introduce the NIF without the required safety changes by bribing Drivers with a 4% wage increase and offering Drivers and Guards a \$2500 cash bonus. This offer was rejected as safety was not for sale.
6. In March 2021, Sydney and NSW Trains put a roll over deal with a 0.3% pay rise to its workforce. This was voted down by 90% of covered employees.
7. In May 2021 NSW Trains sought 35 declarations from the Federal Court in an attempt to implement the same proposals that had been rejected by the FWC. This resulted in a 4-day hearing in July 2021.
8. In June 2021, management began bargaining for a new enterprise agreement. The RTBU filed for a protected action ballot to start taking industrial action. This was fiercely opposed by the NSW Government spending over \$500,000 on lawyers to prevent it.
9. On 3 August 2021 the Federal Court declined to make any of the declarations sought by NSW Trains and dismissed their case. The NSW Government was therefore unable to implement the workplace changes required to introduce the NIF without the agreement of the RTBU. In its judgment, the Court importantly found:

Based upon the evidence of Mr Clemens and Mr Dornan, it is nevertheless found as a fact that the reliance placed by the Mariyung Fleet upon CCTV technology has the potential to expose weaknesses in that Fleet’s methods of operation. Those potential weaknesses are only further potentially compounded by the lack of reliance intended to be placed upon the former functions performed by guards.
10. Between June 2021 and February 2022, the Government “surface” bargained with the Combined Rail Unions, meaning that they listened and said NO to everything the union asked for.

11. In September 2021, RTBU members commenced industrial action. The union continued to take industrial action on and off for several months.
12. On 18 February 2022, the NSW Government attempted to terminate the RTBU's right to take industrial action in the Fair Work Commission. Ultimately, they were unsuccessful, and the industrial action continued.
13. On 21 February 2022, the NSW Government shut the entire network down without notice, locking out railway workers from their work. Initially the union was blamed for a "strike" until it became obvious that everyone was at work, they just weren't being allowed to work.
14. On 22 February 2022, the rail network re-opened, despite no changes to the protected industrial action that allegedly caused it to shut down the day prior.
15. RTBU industrial action continued into March 2022.
16. In March 2022, a ceasefire was agreed to allow a 6 week period of intensive negotiations to take place, and a number of claims were acceded to.
17. In this period, both the unions 'One Agreement' claim, and the NIF alterations (relocating the bell and door controls in Cabs, removing screens from drivers' vision, allowing the crew door to stay open when train is in motion) was agreed to by Transport for NSW.
18. The Union began working on the details of how the NIF would enter into passenger service through an "interim model" until the full suite of changes were made.
19. On 29 April 2022, Transport for NSW agreed to have One Agreement for both Sydney and NSW Trains.
20. By 6 May 2022, most of the claims made by the Unions were resolved and the outstanding issue of pay stood as the final item of discussion.
21. **Second Backflip** - On 12 May 2022, Damien Tudehope (Minister for Employee Relations) stated that there would be no changes made to the NIF, and that the One Agreement claim was not agreed to.
22. On 16 May 2022, RTBU meets with Dominic Perrottet (Premier) about the backflip and he promises to investigate.
23. On 19 May 2022, David Elliot promised NIF again, if unions give up the requirement for in-principal union agreed before a vote under clause 12 (described by him as a veto right).
24. Union agrees to remove clause 12 veto right in order to get changes to NIF.
25. **Third Backflip** - on 24 June 2022, Damien Tudehope states that he still rejects changes to the NIF and One Agreement.
26. On 29 June 2022, David Elliot again promises the NIF and One Agreement and asks Transport for NSW to draft a deed to reflect the agreement this time.
27. **Fourth Backflip** - on 30 June 2022, RTBU meets with Transport for NSW to sign the deed to settle the NIF dispute. Transport Secretary refuses to sign the deed drafted by his department until full enterprise agreement is signed off on. However, the RTBU publicly signed the deed ready for the Transport Secretary to sign whenever he chooses.
28. The Government's position was (and remains) that it will only make the changes to the NIF if the unions sign off on a pay rise in line with their wages policy.
29. On 4 July 2022, the Government (with the Agencies) filed a case in FWC to terminate bargaining or to suspend protected industrial action. Initially it sort an interim decision (akin to an injunction) to stop the unions industrial action.

30. On 5 July 2022, FWC ruled against the Government on its interim decision application allowing the RTBU to continue industrial action.
31. On 7 and 8 July 2022, FWC heard the Government's case to terminate bargaining and shut down the Union's right to take protected industrial action.
32. On 9 July 2022, FWC ruled against the Government again, citing a lack of evidence for the Government's claims of economic and health risks. FWC commended the RTBU's commitment to safety on the railways.
33. On 10 July 2022, the Combined Rail Unions reaffirmed the wage claim of 3.5% it had pressed since June 2021, albeit with an optional supplement 4% in the event that inflation continues to increase in an attempt to prevent substantial real wage cuts.
34. On 18 July 2022, the CRU's leadership met with Ministers Tudehope and Ward, the Agency Chief Executives, and TfNSW to discuss progress and the unions wage claim. They formally rejected the unions wage claim. They stated that the unions claim was akin to a 16% increase. However, that number was debunked immediately in the room as it contained false assumptions. This was acknowledged at the time, but the Government still ran with this line in the media.
35. The NIF safety alterations remain outstanding, and the Government refuses to sign a deed to make the changes to the train.
36. On 28 July 2022, at midnight, RTBU members across the entire rail network walked off the job due to mounting frustration at Government backflips and refusal to bargain on pay and conditions.
37. On 1 August 2022, given continued inaction by the Government, the RTBU released an industrial action calendar for the month containing multiple strikes and various other pieces of protected industrial action across all divisions of the union.
38. On 4 August 2022, at around 10pm, Management sent the RTBU a list of 18 previously agreed items that it was backflipping on.
39. On 10 August 2022, members in Strike Area 1 (those who work along the Illawarra Line) held a 6 hour stoppage and a stop work meeting at Hurstville Entertainment Centre to discuss the progress of bargaining.
40. On 17 August 2022, members in Strike Area 2 held a 6 hour stoppage and a stop work meeting at Lidcombe Bowling Club to discuss bargaining. On the same day, Train Crew began to only take out trains that met minimum operating standards for maintenance centres – an action expected to have a low impact.
41. On 19 August 2022, the NSW Government provided the RTBU with a NIF deed with different terms to the one signed on 30 June 2022 by the union. The deed contains many terms unacceptable to the RTBU, and which would render the deed superfluous.
42. That afternoon, RTBU Delegates and Lawyers work all day to make any necessary amendments to the deed, of which there are many. At 5pm the RTBU returns the deed to Government with its changes.
43. Over the weekend of 20-21 August 2022, it is revealed that much of the train fleet does not meet minimum maintenance centre standards. Therefore much of the fleet goes out of service to be repaired or cleaned, causing significant disruption.
44. On 22 August 2022, at 1.04pm, the RTBU receives a response to the NIF deed which essentially reverts to the original deed put by the Government on 19 August 2022.
45. On 23 August 2022, the RTBU meets with the Minister for Regional Transport and Transport Secretary to discuss the deed. Productive discussions were had, and the Government undertook to provide a further deed. Later that day, members in Strike

- Area 3 held a 6 hour stoppage and stop work meetings in Blacktown and Hornsby to discuss progress in bargaining.
46. On 24 August 2022, RTBU Delegates met with Management to continue bargaining. Some progress is made on the backflips made on 4 August 2022, however significant work is still required to get back to previously agreed positions.
 47. At 3.18pm on 24 August 2022, the RTBU is sent a further draft deed with no mark ups of changes to consider. The RTBU spends hours after the conclusion of bargaining going over the deed.
 48. On 26 August 2022, the RTBU met with Minister Farraway and further discussed the deed. At this stage, the Government's position was that the deed would be contingent on a "Yes" vote in the enterprise agreement. Over the following weekend, the Government wrote to the Union recasting its position now saying that the NIF deed would be contingent on a Yes vote and the union ceasing its industrial action.
 49. Between 29-31 August 2022, the CRU and Transport for NSW held discussions to attempt to resolve the backflips that had occurred at the start of the month. These meetings went into the night each day and some progress was achieved.
 50. On 31 August 2022, Premier Dominic Perrottet held a press conference where he threatened to terminate the current enterprise agreement if the RTBU continued to take industrial action. At 11am, David Elliot met with the CRU and stated that he would terminate the agreement if a "No" vote was returned in a ballot.
 51. On 1 September 2022, the NSW Government ordered Transport to immediately terminate bargaining and put the draft Agreement to a vote. This occurred without notice to either the CRU or Transport officials. That night the CRU lodged for good faith bargaining orders with the Fair Work Commission.
 52. On 6 September 2022, the Fair Work Commission was due to begin hearing the case. However, the Government turned up on the day requesting an adjournment saying that it was not ready to proceed. The CRU sought for the case to go ahead, however the Government offered the Commission undertakings that it would not apply to terminate the agreement or put the agreement to a vote until the case had been finalised.
 53. On 9 September 2022, the Fair Work Commission began hearing the CRU's case for good faith bargaining orders. The case did not finalise that day and continued on 14 September 2022. The case was then put off until 6 October 2022 due to the Deputy President of the Commission's planned leave.
 54. On 11 September 2022, the RTBU notified industrial action to commence on 21 September which involved turning off opal machines to provide NSW commuters with free train travel, indefinitely.
 55. On 16 September 2022, the CRU engaged in conciliation before FWC with Transport to try and settle some of the issues still in dispute. This conciliation was ongoing with the final session to be held on 29 September.
 56. On 17 September 2022, at 12.16am, the NSW Government filed an application in FWC for an order stopping RTBU members from turning off the opal machines on 21 September. That night the RTBU withdrew the action.
 57. On 19 September 2022, the RTBU filed in FWC for a new protected action ballot asking its members specifically if they would turn off the opal machines. On 20 September 2022, the Government indicated that it would not oppose the order being made for the ballot, but did argue that it needed 7 days to prepare for the action.

58. On 26 September 2022, FWC sided with the RTBU ordering that it would only have to give 3 days' notice for the industrial action of turning off the opal machines and a ballot order was made.
59. On 6 October 2022, the RTBU continued the good faith bargaining case before FWC. That day our barrister cross examined Sydney and NSW Trains' witnesses at length to demonstrate that the Government had not been bargaining in good faith. Written submissions were then submitted to the Commission to support our case. We are now awaiting the decision of the Commission.
60. On 12 October 2022, the protected action ballot result was released with RTBU members voting 97% in favour of taking the industrial action of turning off or otherwise deactivating the opal machines.
61. On 16 October 2022, the RTBU notified Sydney Trains and NSW Trains that it would be deactivating the opal gates for the afternoon peak on weekdays from 20 October 2022 continuing indefinitely.
62. On 19 October 2022, the NSW Government launched the most vicious legal attack on its workforce since the waterfront disputes of 1998. It began a legal case in the Federal Court to sue its own workforce for the action allegedly taken throughout August and September of leaving opal gates open and sought to stop members from deactivating the opal gates. Given that there was never an objection raised previously, this was a move of extreme bad faith.
63. The same day, the RTBU paused the opal action and asked the Federal Court to declare that the action was legal as soon as possible.
64. On 26 October 2022, the Federal Court made a decision to not hear the case urgently, and instead decided to hear the case in February 2023. This was despite the RTBU and the NSW Government agreeing that the case should be heard urgently.
65. On 27 October 2022, the CRU sent an offer to Sydney Trains and NSW Trains on what the wage increases should be for the new agreement. The offer would have seen RTBU members wages increase by 8.8% (not including superannuation) over and 18-month agreement expiring on 1 May 2024. It also built on the bonus payment previously offered by the Government which would have equated to 3.03% for the year from 1 May 2021 to 1 May 2022.
66. On 1 November 2022, the RTBU released a new industrial action calendar for that month. Actions under that calendar began slow and then escalated from 14 November onwards. A different feature of this calendar was that all actions on it were subject to fares being charged for train services. In other words, if the Government gave free fares, the actions would not proceed.
67. On 17 November 2022, Premier Dominic Perrottet called an urgent meeting with the RTBU in an effort to have the actions commencing from 21 November 2022 postponed. A major topic of this conversation was the safety changes required to the NIF. The RTBU again sought to have the deed altered and signed. The meeting did not result in any concessions and the action was set to proceed.
68. On 18 November 2022, the Premier announced that all train services would have free fares for the week of 21 November to 25 November. After receiving confirmation by letter from TfNSW, the RTBU confirmed that the actions wouldn't proceed for that period of time.
69. On 22 November 2022, the CRU attended a further conciliation before the Fair Work Commission to continue negotiations around the RTBU's outstanding claims.

70. After the lack of success at the Fair Work Commission, the RTBU notified that it would be taking a further 4-hour stoppage on 2 December 2022 in accordance with its industrial action calendar.
71. On 25 November 2022, the Fair Work Commission called on a further conciliation in an effort to settle the dispute. That morning, Sydney Trains and NSW Trains continued to refuse to accede to the RTBU's claims and the stalemate continued.
72. Around lunch time that day, the Premier sent the Transport Minister, David Elliot to attend the conciliation session. At that point in time, the bargain began to move forward again. TfNSW agreed to:
 - a. increase the new Higher Standards Cleaning Allowance for our Cleaners to \$2.25 per hour;
 - b. insert the previously agreed "Risk Assessments" clause into the agreement;
 - c. undertake to the Commission to maintain roles that are vital to ensure safety at the platform train interface;
 - d. arbitrate on:
 - i. the cleaning allowance for CSAs
 - ii. rostering agreements not finalised within 3 months
 - iii. wages above a guaranteed minimum
73. As a result of the concessions made that day, the CRU and the Employers reached an in-principle agreement on the new EA.
74. Over the course of December 2022, the CRU and Trains concluded drafting on all outstanding clauses.
75. In January 2023, the Employers conducted roadshows to explain the new terms of the proposed agreement to employees.
76. On 30 January 2023, after the voting period had concluded, the agreement was voted up with 80% of all employees voting, and 93.6% of those employees voting YES.
77. On 8 and 9 February 2023, the matters subject to arbitration before the Fair Work Commission went to hearing before a Full Bench.
78. On 10 February 2023, the Fair Work Commission approved the *Sydney Trains and NSW Trainlink Enterprise Agreement 2022* which then began operation on 17 February 2023.
79. On 10 March 2023, the Fair Work Commission handed down a decision to award an additional 1% per year of the Agreement, bringing the total pay increases to:
 - a. 3.53% from 1 May 2022; and
 - b. 4.03% from 1 May 2023.
80. Unfortunately the Commission declined to award CSAs access to the Hazardous Waste Allowance as sought by the Union.
81. The New Intercity Fleet is currently undergoing modifications to bring it into line with the Warratah operating model.
82. The next bargaining round will commence in early 2024 prior to the nominal expiry date on 1 May 2024.