



**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.