

Form 17
Rule 8.05(1)(a)

Statement of claim

Federal Court of Australia
District Registry: NSW
Division: Fair Work Division

Document tendered by
<i>Mr Sharp</i>
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Sydney Trains and another

Applicants

Australian Rail, Tram and Bus Industry Union

Respondent

First Applicant

1. At all material times, the First Applicant was and is:
 - a. a corporation constituted by section 36 of the *Transport Administration Act 1988* (NSW) (**TA Act**); and
 - b. a person able to sue in its own name and style.

2. At all material times, the First Applicant was and is:
 - a. a "constitutional corporation" within the meaning of that phrase in section 14(1) of the *Fair Work Act 2009* (Cth) (**FW Act**);
 - b. a "constitutional corporation" for the purposes of the FW Act; and
 - c. a person with standing to apply for relief in accordance with section 539(2) of the FW Act.

Filed on behalf of (name & role of party)	<u>Sydney Trains and NSW Trains</u>		
Prepared by (name of person/lawyer)	<u>Trent Sebbens / Kate Hollings</u>		
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3. At all material times, the First Applicant operated and operates railway stations in metropolitan Sydney (bounded by Berowra in the north, Richmond in the north west, Emu Plains in the west, Macarthur in the south west and Waterfall in the south) as part of providing railway passenger services in metropolitan Sydney.

Second Applicant

4. At all material times, the Second Applicant was and is:
 - a. a corporation constituted by section 37 of the TA Act; and
 - b. a person able to sue in its own name and style.
5. At all material times, the Second Applicant was and is:
 - a. a "constitutional corporation" within the meaning of that phrase in section 14(1) of the FW Act;
 - b. a "constitutional corporation" for the purposes of the FW Act; and
 - c. a person with standing to apply for relief in accordance with section 539(2) of the FW Act.
6. At all material times, the Second Applicant operated and operates railway stations in Illawarra/South Coast, the Blue Mountains, the Central Coast and Hunter regions of New South Wales as part of providing intercity railway passenger services in New South Wales.

Respondent

7. At all material times, the Respondent was:
 - a. an "employee organisation" within the meaning of that phrase in section 12 of the FW Act;

- b. an "employee organisation" for the purposes of the FW Act; and
 - c. a body corporate able to be sued in its own name and style.
8. At all material times, the Respondent was a "person":
- a. within the meaning of that word in section 343(1) of the FW Act; and
 - b. within the meaning of that word in section 362(1) of the FW Act.
9. At all material times, the Respondent had and has as its members employees of the Applicants working in roles (including Station Duty Managers, Customer Service Attendants and Cleaning Attendants) at railway stations operated by the Applicants (the **Relevant Employees**).

Workplace Right

10. At all material times, each of the Applicants had a workplace right within the meaning of section 341(1) of the FW Act to make or not make an enterprise agreement with its employees (including the Relevant Employees).

Particulars

- i. The right to make or not make an enterprise agreement is a benefit under a workplace law (the FW Act) within the meaning of section 341(1)(a) of the FW Act.
- ii. The right to make or not make an enterprise agreement is an ability to initiate or participate in a process or proceedings under a workplace law (the FW Act) within the meaning of section 341(1)(b) and section 341(2)(e) of the FW Act.

A. First Impugned Action

11. From 3 August 2022 to 17 September 2022, the Respondent organised action by its members who were Relevant Employees by:

- a. leaving all gates at gated railway stations open; and
- b. ensuring that all gates at gated railway stations stayed or remained open,

(the **First Impugned Action**).

Particulars of Organisation

- i. Mr Toby Warnes of the Respondent sent to Mr John McAuliffe of the First Applicant and Ms Jasmin Streimer of the Second Applicant by email a notice headed "Notice of Protected Industrial Action" dated 3 August 2022 (**First Notice**).
- ii. Mr Warnes of the Respondent sent to Mr McAuliffe of the First Applicant and Ms Streimer of the Second Applicant by email a notice headed "Notice of Protected Industrial Action" dated 31 August 2022 (**Second Notice**).
- iii. Mr Warnes of the Respondent sent to Mr McAuliffe of the First Applicant and Ms Streimer of the Second Applicant by email a notice headed "Notice of Protected Industrial Action" dated 11 September 2022 (**Third Notice**).
- iv. The Respondent issued to its members a notice headed "Shutting Down the Opal Gates – Station Staff Industrial Action" dated 13 September 2022.
- v. The Respondent published to its members a notice headed "Shutting Down the Opal Gates – Station Staff Industrial Action" dated

13 September 2022 on its RTBU Express website (www.rtbuexpress.com.au) on 13 September 2022.

- vi. Mr Warnes of the Respondent sent to Mr Longland of the First Applicant and Mr Allaway of the Second Applicant by email a letter dated 17 September 2022 notifying the ceasing of the First Impugned Action at 11.59pm on 17 September 2022.
- vii. The Applicants rely on section 793 of the FW Act.
- viii. Such further particulars as are notified by the Applicants to the Respondent prior to the commencement of the hearing following discovery, the production of documents in response to subpoena and the production of documents in response to notices to produce.

Particulars of Gates

- ix. The gates were of two kinds.
 - x. The first gates were known as "legacy gates" and comprised red paddles that prevented access to and egress from a railway station.
 - xi. The second gates were known as "E2 gates" and comprised black paddles that prevented access to and egress from a railway station.
 - xii. There are 632 of the first gates located across 46 railway stations (including Bondi Junction, Central, Edgecliff, Gosford, Kings Cross, Martin Place, St James, Town Hall and Woy Woy railway stations).
 - xiii. There are 280 of the second gates located at 10 railway stations (including Central, Newcastle, Town Hall and Wynyard railway stations).
12. From 13 August 2022 to 6 September 2022, and from 10 September 2022 to 17 September 2022 the Respondent took the First Impugned Action and engaged in the First Impugned Action.

Particulars of Taking

- i. The Respondent took the First Impugned Action as one or more of its members who were Relevant Employees took the First Impugned Action and as the conduct of such members is attributable to the Respondent.
- ii. The Respondent engaged in the First Impugned Action as one or more of its members who were Relevant Employees took the First Impugned Action and as the conduct of such members is attributable to the Respondent.
- iii. Such further particulars as are notified by the First Applicant to the Respondent prior to the commencement of the hearing following discovery, the production of documents in response to subpoena and the production of documents in response to notices to produce.

Lack of Industrial Action

13. The First Impugned Action was not "industrial action" within the meaning of that phrase in section 19 of the FW Act.

Particulars

- i. The First Impugned Action did not involve a limitation on the performance of work within the meaning of section 19(1)(a) or section 19(1)(b) of the FW Act as the performance of work by the Relevant Employees (including a Customer Service Attendant) did not and does not involve:
 - A. leaving all gates at railway stations open; or
 - B. ensuring that all gates at railway stations stayed or remained open.
- ii. The First Impugned Action did not involve a ban on the performance of work within the meaning of section 19(1)(b) of the FW Act.

- iii. The First Impugned Action did not involve the performance of work in a manner different from that in which it is customarily performed within the meaning of section 19(1)(a) as the performance of work by the Relevant Employees (including a Customer Service Attendant) did not and does not involve:
 - A. leaving all gates at railway stations open; or
 - B. ensuring that all gates at railway stations stayed or remained open.
- iv. The First Impugned Action involved the taking of action beyond, and outside the range of, the performance of work by Relevant Employees.
- v. The First Impugned Action did not involve a refusal or failure to attend for work within the meaning of section 19(1)(c) of the FW Act.
- vi. The First Impugned Action did not involve a refusal or failure to perform any work at all within the meaning of section 19(1)(c) of the FW Act.
- vii. The First Impugned Action did not involve a lockout of employees within the meaning of section 19(1)(d) of the FW Act.
- viii. The First Impugned Action was not action of the kind within the meaning of section 19(2) of the FW Act.

Lack of Protected industrial Action

- 14. The First Impugned Action was not employee claim action within the meaning of that phrase in section 409(1) of the FW Act.

Particulars

- i. The First Impugned Action was not industrial action (see paragraph [13]) and thus could not be employee claim action.

- ii. The First Impugned Action was not authorised by a protected action ballot (and, in particular, was not authorised by the protected action ballot ordered to be undertaken on 24 January 2022 by Vice President Catanzariti of the Fair Work Commission (PR737691)) and declared on 9 February 2022 and thus did not meet the additional requirements set out in section 409 of the FW Act (and, in particular, the requirement in section 409(2)) and could not be employee claim action.
15. The First Impugned Action was not employee response action within the meaning of that phrase in section 410(1) of the FW Act.

Particulars

- i. The First Impugned Action was not industrial action (see paragraph [13]) and thus could not be employee response action.
 - ii. The First Impugned Action was not a response to industrial action of the Applicants and thus could not be employee response action.
16. The First Impugned Action was not protected industrial action within the meaning of that phrase in section 408 of the FW Act.

Particulars

- i. The First Impugned Action was not industrial action (see paragraph [13]) and thus could not be protected industrial action.
- ii. The First Impugned Action was not employee claim action (see paragraph [14]) and thus could not be protected industrial action.
- iii. The First Impugned Action was not employee response action (see paragraph [15]) and thus could not be protected industrial action.

Contravention of Section 343

First Contravention

17. The Respondent organised the First Impugned Action.

Particulars

See the particulars to paragraph [11].

18. The Respondent organised the First Impugned Action against the First Applicant.

Particulars

See the particulars to paragraph [11].

19. The Respondent organised the First Impugned Action against the Applicants with the intent of forcing the Applicants to accede to its claims in bargaining for a proposed enterprise agreement.

Particulars of Intention

i. The Respondent knew that the First Impugned Action would hurt financially the Applicants.

ii. The persons on behalf of the Respondent who had the knowledge included:

A. Mr Alex Claassens (the Secretary of the NSW Branch of the Respondent);

B. Mr Warnes (the Director of Organising of the NSW Branch of the Respondent); and

- C. each delegate of the Respondent who attended one or more of the bargaining meetings with the Applicants in the period 3 August 2022 to 17 September 2022.
- iii. The First Impugned Action was intended to hurt financially the Applicants.
 - iv. The First Impugned Action was also intended to hurt financially the Government of New South Wales.
 - v. The intended financial hurt was intended to force the Applicants to accede to the claims of the Respondent (including claims for a 3.5% wage increase with backpay, a 'pandemic/productivity allowance', and particular forms of clauses to be included in an enterprise agreement concerning disciplinary proceedings, cleaning allowance, facilitation, rostering arrangements, risk assessments, driver only 'platform train interface' and 'no prior advice' meal allowance).
 - vi. The intended financial hurt was intended to force the Government of NSW to direct or require the Applicants to accede to the claims of the Respondent.
 - vii. The First Impugned Action was intended to be taken in the context of media attention created by the Respondent.
 - viii. The First Impugned Action was intended to be taken in the context of high unionisation of the Relevant Employees.
 - ix. Given the matters in (i) to (viii), the First Impugned Action was intended to negate choice in the Applicants and the Government of NSW.
 - x. The persons on behalf of the Respondent who had the intent to negate choice included the persons identified in particular (ii).
 - xi. The Applicants rely upon section 361 of the FW Act.

- xii. The Applicants rely upon section 363 of the FW Act, including section 363(1)(b), section 363(1)(c)(iii) and section 363(3).
- xiii. The Applicants rely upon section 793 of the FW Act.

Particulars of Forcing

- xiv. The Respondent knew of the circumstances in which the Applicant would be hurt financially.
 - xv. The persons on behalf of the Respondent who had the knowledge included the persons in particular (ii).
 - xvi. The Applicants rely on section 793 of the FW Act.
 - xvii. To the extent that unlawfulness is required, the First Impugned Action was a breach of the contract by the Relevant Employees of their contract of employment with the First Applicant or the Second Applicant.
 - xviii. To the extent that unlawfulness or illegitimate pressure is required, the First Impugned Action was the application of unlawful or illegitimate pressure and conduct on the Applicants by reason of the First Impugned Action not being protected industrial action (see paragraph [16]).
20. By reason of the matters in paragraph [19], the Respondent intended to coerce the Applicants to exercise their workplace right (and, in particular, to make an enterprise agreement with the Respondent).
21. By reason of the matters in paragraph [19], the Respondent intended to coerce the Applicants to exercise their workplace right in a particular way (and, in particular, to make an enterprise agreement in terms required or proposed by the Respondent).
22. By reason of the matters in paragraphs [7], [8] and [13 to 21], the Respondent contravened section 343(1) of the FW Act.

23. By reason of the contravention in paragraph [22], the Applicants have suffered loss and damage.

Particulars

- i. Loss of fares from 13 August 2022 to 17 September 2022.
- ii. Such further particulars of loss as are notified by the Applicants to the Respondent prior to the commencement of the hearing following discovery, the production of documents in response to subpoena and the production of documents in response to notices to produce.

Second Contravention

24. The Respondent took the First Impugned Action.

Particulars

See the particulars to paragraph [11].

25. The Respondent took the First Impugned Action against the Applicants.

Particulars

See the particulars to paragraph [11].

26. The Respondent took the First Impugned Action with the intent of forcing the Applicants to accede to its claims in bargaining for a proposed enterprise agreement.

Particulars

See particulars to paragraph [19].

27. By reason of the matters in paragraph [26], the Respondent intended to coerce the Applicants to exercise their workplace right (and, in particular, to make an enterprise agreement in terms required or proposed by the Respondent).
28. By reason of the matters in paragraph [26], the Respondent intended to coerce the Applicants to exercise their workplace right in a particular way (and, in particular, to make an enterprise agreement in terms required or proposed by the Respondent).
29. By reason of the matters in paragraphs [7], [8], [13 to 16] and [24 to 28], the Respondent contravened section 343(1) of the FW Act.
30. By reason of the contravention in paragraph [29], the Applicants have suffered loss and damage.

Particulars

See the particulars to paragraph [23].

Contravention of Section 362

31. The Respondent organised the First Impugned Action.

Particulars

See the particulars to paragraph [11].

32. The Respondent advised and encouraged the Relevant Employees to take the First Impugned Action.

Particulars

See the particulars to paragraph [11].

33. The Respondent advised and encouraged the Relevant Employees to take the First Impugned Action against the Applicants.

Particulars

See the particulars to paragraph [11].

34. The Respondent engaged in the conduct in paragraphs [32] and [33] for the reason of forcing the Applicants to accede to its claims in bargaining for a proposed enterprise agreement.

Particulars

See the particulars to paragraph [19].

35. By reason of the matters in paragraph [34], the First Impugned Actions if taken by the Relevant Employees would contravene section 343 of the FW Act.

Particulars

- i. The First Impugned Actions were taken with intent to coerce the Applicants to exercise a workplace right (see paragraphs [19] and [20]).
- ii. The First Impugned Actions were taken with intent to coerce the Applicants to exercise a workplace right in a particular way (see paragraphs [19] and [21]).
- iii. The First Impugned Actions if taken by the Relevant Employees with the intent to coerce the Applicants to exercise a workplace right (or to exercise a workplace right in a particular way) would contravene section 343 of the FW Act.

36. By reasons of the matters in paragraphs [32] to [35], the Respondent contravened section 362 of the FW Act.

37. By reason of the contravention in paragraph [36], the Applicants have suffered loss and damage.

Particulars

See the particulars to paragraph [23].

Trespass to Goods

38. **At all material times, the First Applicant was in possession of gates at the railway stations.**

Particulars

See the particulars of gates in paragraph [11].

39. From 13 August 2022 to 17 September 2022, the Respondent interfered with the gates (the **Interference**).

Particulars of Conduct of First Applicant

- i. The Respondent took the First Impugned Action as one or more of its members took the First Impugned Action and as the conduct of the members is attributable to the Respondent.

Particulars of Interference

- ii. The Interference involved pressing the emergency egress button for the gates at the railway station or pressing a "Gates Open" electronic button on a 'gate array' computer terminal for the gates at the railway station.
- iii. The Interference was not authorised by the First Applicant.

40. The Interference was intentional.

Particulars

- i. The Interference was deliberate and wilful.
- ii. The Interference involved the implementation of the First Impugned Action notified in the First Notice, the Second Notice and the Third Notice.
- iii. The Interference was not accidental or inadvertent.
- iv. The interference was taking action by the Relevant Employees beyond, and outside of, the performance of work by the Relevant Employees.
- v. The Interference was known by the Relevant Employees not to be authorised by the Applicants.

41. By reason of the matters in paragraphs [38] to [40], the Respondent engaged in a trespass to goods.

42. By reason of the matters in paragraph [41], the First Applicant suffered loss and damage.

Particulars

See the particulars to paragraph [23].

B. Second Impugned Action

43. From 16 October 2022 to current date, the Respondent organised (and is continuing to organise) action by its members who were Relevant Employees by deactivating Opal gates at railway stations, by pressing the red deactivation button on any occasion the Opal Gates are not deactivated (the **Second Impugned Action**).

Particulars of Organisation

- i. Mr Warnes of the Respondent sent to Mr McAuliffe of the First Applicant and Ms Streimer of the Second Applicant by email a notice headed "Notice of Protected Industrial Action" dated 16 October 2022 (**Fourth Notice**).
- ii. The Respondent issued to its members a notice dated 16 October 2022.
- iii. Mr Claassens of the Respondent spoke to the media (including Mr Matt O'Sullivan, a representative of SMH) on 13 October 2022 in relation to the Second Impugned Action.

Particular of Gates

See the particulars to paragraph [11].

Lack of industrial Action

44. The Second Impugned Action was and is not "industrial action" within the meaning of that phrase in section 19 of the FW Act.

Particulars

- i. The Second Impugned Action did not and does not involve the performance of work in a manner different from that in which it is customarily performed within the meaning of section 19(1)(a) as the performance of work by the Relevant Employees (including a Customer Service Attendant) did not and does not involve:
 - A. deactivating Opal gates at railway stations; or
 - B. ensuring that Opal gates at railway stations remained deactivated.

- ii. The Second Impugned Action did not and does not involve a restriction or limitation on the performance of work within the meaning of section 19(1)(a) or section 19(1)(b) of the FW Act as the performance of work by the Relevant Employees (including a Customer Service Attendant) did not and does not involve:
 - A. deactivating Opal gates at railway stations; or
 - B. ensuring that Opal gates at railway stations remained deactivated.
- iii. The Second Impugned Action involved the taking of action beyond, and outside the range of, the performance of work by Relevant Employees.
- iv. The Second Impugned Action did not and does not involve the interruption in the performance of work by the Relevant Employees.
- v. The Second Impugned Action did not and does not involve a delay in the performance of work within the meaning of section 19(1)(a) of the FW Act.
- vi. The Second Impugned Action did not and does not involve a ban on the performance of work within the meaning of section 19(1)(b) of the FW Act.
- vii. The Second Impugned Action did not involve a refusal or failure to attend for work within the meaning of section 19(1)(c) of the FW Act.
- viii. The Second Impugned Action did not involve a refusal or failure to perform any work at all within the meaning of section 19(1)(c) of the FW Act.
- ix. The Second Impugned Action did not involve a lockout of employees within the meaning of section 19(1)(d) of the FW Act.

- x. The Second Impugned Action was not action of the kind within the meaning of section 19(2) of the FW Act.

Lack of Protected Industrial Action

- 45. The Second Impugned Action was and is not employee claim action within the meaning of that phrase in section 409(1) of the FW Act.

Particulars

The Second Impugned Action was not industrial action (see paragraph [44]) and thus could not be employee claim action.

- 46. The Second Impugned Action was and is not employee response action within the meaning of that phrase in section 410(1) of the FW Act.

Particulars

- i. The Second Impugned Action was not industrial action (see paragraph [44]) and thus could not be employee response action.
- ii. The Second Impugned Action was not a response to industrial action of the Applicants and thus could not be employee response action.

- 47. The Second Impugned Action was and is not protected industrial action within the meaning of that phrase in section 408 of the FW Act.

Particulars

- i. The Second Impugned Action was not industrial action (see paragraph [44]) and thus could not be protected industrial action.
- ii. The Second Impugned Action was not employee claim action (see paragraph [45]) and thus could not be protected industrial action.

- iii. The Second Impugned Action was not employee response action (see paragraph [46]) and thus could not be protected industrial action.

Contravention of Section 343

- 48. The Respondent organised (and continuing to organise) the Second Impugned Action.

Particulars

See the particulars to paragraph [43].

- 49. The Respondent organised (and continuing to organise) the Second Impugned Action against the First Applicant.

Particulars

See the particulars to paragraph [43].

- 50. The Respondent organised (and continuing to organise) the Second Impugned Action against the Applicants with the intent of forcing the Applicants to accede to its claims in bargaining for a proposed enterprise agreement.

Particulars of Intention

- i. The Respondent knew that the First Impugned Action would hurt financially the Applicants.
- ii. The persons on behalf of the Respondent who had the knowledge included:

A. Mr Claassens;

B. Mr Warnes; and

- C. each delegate of the Respondent who attended the delegates meeting of the Respondent on 13 October 2022 and who voted at that meeting to endorse the taking of the Second Impugned Action.
- iii. The Second Impugned Action was intended to hurt financially the Applicants.
 - iv. The Second Impugned Action was also intended to hurt financially the Government of New South Wales.
 - v. The intended financial hurt was intended to force the Applicants to accede to the claims of the Respondent.
 - vi. The intended financial hurt was intended to force the Government of NSW to direct or require the Applicants to accede to the claims of the Respondent.
 - vii. The Second Impugned Action was intended to be taken in the context of media attention created by the Respondent.
 - viii. The Second Impugned Action was intended to be taken in the context of high unionisation of the Relevant Employees.
 - ix. Given the matters in (i) to (viii), the Second Impugned Action was intended to negate choice in the Applicants and the Government of NSW.
 - x. The persons on behalf of the Respondent who had the intent to negate choice included the persons identified in particular (ii).
 - xi. The interference was a contravention of regulation 68B of the *Passenger Transport (General) Regulation 2017* (NSW) by using emergency equipment (and, in particular, by using the red emergency button) on a station without reasonable excuse and not in the course of duties.

- xii. The Applicants rely upon section 361 of the FW Act.
- xiii. The Applicants rely upon section 363 of the FW Act, including section 363(1)(b), section 363(1)(c)(iii) and section 363(3).
- xiv. The Applicants rely upon section 793 of the FW Act.

Particulars of Forcing

- xv. The Respondent knew of the circumstances in which the Applicant would be hurt financially.
- xvi. The persons on behalf of the Respondent who had the knowledge included the person in particular (ii).
- xvii. The Applicants rely upon section 793 of the FW Act.
- xviii. To the extent that unlawfulness is required, the Second Impugned Action was a breach of the contract by the Relevant Employees of their contract of employment with the First Applicant or the Second Applicant.
- xix. To the extent that unlawfulness is required, the Second Impugned Action was a contravention of regulation 68B of the *Passenger Transport (General) Regulation 2017* (NSW) by using emergency equipment (and, in particular, by using the red emergency button) on a station without reasonable excuse and not in the course of duties.
- xx. To the extent that unlawful and illegitimate pressure is required, the Second Impugned Action was the application of unlawful or illegitimate pressure and conduct on the Applicants by reason of the Second Impugned Action not being protected industrial action (see paragraph [47]).

51. By reason of the matters in paragraph [50], the Respondent intended to coerce the Applicants to exercise their workplace right (and, in particular, to make an enterprise agreement in terms required or proposed by the Respondent).
52. By reason of the matters in paragraph [50], the Respondent intended to coerce the Applicants to exercise their workplace right in a particular way (and, in particular, to make an enterprise agreement in terms required or proposed by the Respondent).
53. By reason of the matters in paragraphs [7], [8] and [48] to [52], the Respondent contravened section 343(1) of the FW Act.
54. By reason of the contravention in paragraph [53], the Applicants is likely to suffer loss and damage.

Particulars

- i. Loss of fares from 20 October 2022 (and each day on which the Second Impugned Action it was taken thereafter).
- ii. Such further particulars as are notified by the Applicants to the Respondent prior to the commencement of the hearing following discovery, the production of documents in response to subpoena and the production of documents in response to notices to produce.

Contravention of Section 362

55. The Respondent organised (and continuing to organise) the Second Impugned Action.

Particulars

See the particulars to paragraph [43].

56. The Respondent advised and encouraged the Relevant Employees to take the Second Impugned Action.

Particulars

See the particulars to paragraph [43].

57. The Respondent advised and encouraged the Relevant Employees to take the Second Impugned Action against the Applicants.

Particulars

See the particulars to paragraph [43].

58. The Respondent engaged in the conduct in paragraphs [56] and [57] for the reason of forcing the Applicants to accede to its claims in bargaining for a proposed enterprise agreement.

Particulars

See the particulars to paragraph [50].

59. By reason of the matters in paragraph [58], the Second Impugned Actions if taken by the Relevant Employees would contravene section 343 of the FW Act.

Particulars

- i. The Second Impugned Actions were taken with intent to coerce the Applicants to exercise a workplace right (see paragraphs [50] and [51]).
- ii. The Second Impugned Actions were taken with intent to coerce the Applicants to exercise a workplace right in a particular way (see paragraphs [50] and [52]).
- iii. The Second Impugned Actions if taken by the Relevant Employees with the intent to coerce the Applicants to exercise a workplace right (or to exercise a workplace right in a particular way) would contravene section 343 of the FW Act.

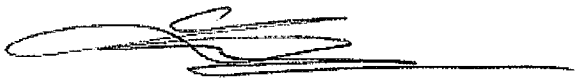
60. By reasons of the matters in paragraphs [55] to [59], the Respondent contravened section 362 of the FW Act.

61. By reason of the matters in paragraph [60], the First Applicant is likely to suffer loss and damage.

Particulars

See the particulars to paragraph [54].

Date: 18 October 2022



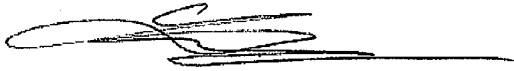
Signed by Trent Daniel Sebbens
Lawyer for the Applicants

This pleading was prepared by H J Dixon SC and A B Gotting of counsel

Certificate of lawyer

I, Trent Daniel Sebbens, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicants, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 18 October 2022

A handwritten signature in black ink, appearing to read 'Trent Daniel Sebbens', written over a horizontal line.

Signed by Trent Daniel Sebbens
Lawyer for the Applicants

Schedule

No. of 2022

Federal Court of Australia
District Registry: NSW
Division: Fair Work

Applicants

Second Applicant: NSW Trains

Date: 18 October 2022