

9<sup>th</sup> July 2013

# C I R C U L A R

**To: All RailCorp Depot Organisers, Workplace Organisers and Members**

**Re: 2014 Collective Agreement Issues – FAQ's**

Please find attached a compilation of frequently asked questions and answers that have arisen from the RailCorp EA sessions held during the recent Committee meetings.

In addition to this document being a useful to enable Organisers to answer any questions members may ask, It would also be appreciated if Organisers could make this information readily available to RailCorp members.

**1. If RailCorp is a corporation, what are Sydney and NSW Trains classified as?**

Sydney and NSW Trains are wholly owned subsidiaries of RailCorp. They are responsible for the operational functions of the NSW government owned Rail network, meaning they incorporate activities such as customer service roles and train operation and maintenance. RailCorp will continue to own the assets, but will have no ongoing role as an operator of the network..

Carriage cleaners have been 'assigned' to a new entity called *Transport Cleaning Services*, which is managed by Transfield, but the cleaners continue as employees of RailCorp and continue to be covered by the terms and conditions of the RailCorp Enterprise Agreement.

**2. How will the new entities affect us legally?**

The RTBU, other rail unions and Unionsnsw have been successful in having the current RailCorp Enterprise Agreement coverage transferred to Sydney Trains and NSW Trains, and Fair Work Australia has issued orders to that effect. This means everyone who is currently covered by the EA and whose work is transferred across on 1<sup>st</sup> July will continue to be covered by the RailCorp Enterprise Agreement after Sydney and NSW Trains start operating. Negotiations for a replacement agreement will occur on the terms and conditions, including the expiry date, of the current RailCorp EA.

**3. What if we still don't have a replacement EA after a long period of negotiating? Can the current EA be deregistered? If so, what will replace it?**

The RailCorp EA 2010 remains enforceable while ever it is registered, even if the negotiations for a new EA take a very long time.

There are some circumstances in which the employer *could* apply to FWA for the agreement to be deregistered, and thus no longer enforceable.

However, there is a very high hurdle for any party to an Enterprise Agreement to successfully apply for termination of the Agreement. An application for termination of the agreement would have to be made under s226 of the Fair Work Act by RailCorp, and RailCorp would have to satisfy the Commission that it was not contrary to the public interest to terminate it. In making its decision, Commission has to take into account the views of employees of RailCorp, the likely effect on employees, organisations (the unions covering the employees) as well as the view of the employer.

The above analysis is of course, based on the operation of the current Fair Work Act. A conservative federal government may be in a position to amend the Act making it far easier to terminate an agreement against the wishes of the employees and the relevant unions.

**4. Can we ask for backpay, even if we know what the answer will be?**

Members are entitled to demand back pay from the employer to compensate for the fact that the employer has imposed delays, or because the negotiations have been delayed for reasons outside anyone's control.

However, the employer (and more importantly), the government may refuse to pay it because NSW government policy currently prohibits back pay, irrespective of how long negotiations take.

In the event that the employer and the government refuse back pay, we will not be able to make that issue part of the reasons for taking protected action.

**5. How will members participate in the formulation of the claim?**

Prior to any claim being served on the employer, members will be surveyed to ascertain their views on their wages and conditions going forward.

A draft log of claims will be then circulated to members for their consideration, and once members have had the opportunity to consider their views, a final log of claims will be considered by delegates and endorsed for serving on RailCorp.

**6. Will it be a four year agreement again?**

The term of the next agreement will be one of the matters for members to decide, as part of the final log of claims. If the employer rejects the term desired by the members, that matter will form part of the dispute between management and the workforce.

Yours fraternally

ROBERT HAYDEN  
**DIVISIONAL SECRETARY**