

[2025] FWC 3111

The attached document replaces the document previously issued with the above code on 17 October 2025

It has been refiled to correct a spelling error in the Respondent's name

Timothy Broadstock
Associate to Deputy President Masson

Dated 24 October 2025



DECISION

Fair Work Act 2009

s.536LU - Application for an unfair deactivation remedy

Shahid Mansoor

v

Rasier Pacific Pty Ltd

(UDE2025/141)

DEPUTY PRESIDENT MASSON

MELBOURNE, 17 OCTOBER 2025

Application for an unfair deactivation remedy – applicant was protected from unfair deactivation – whether serious misconduct established – whether deactivation complied with the Digital Labour Platform Deactivation Code – order for reactivation made – order for lost earnings made.

[1] On 30 June 2025, Mr Shahid Mansoor (the Applicant) made an application pursuant to s 536LU of the *Fair Work Act 2009* (Cth) (the Act) seeking an unfair deactivation remedy. In its Form F89A response, Rasier Pacific Pty Ltd (the Respondent), raised a jurisdictional objection that the Digital Labour Platform Deactivation Code (the Code) does not apply because of the Applicant’s alleged serious misconduct.

[2] On 15 October 2025 I conducted a hearing, in advance of which both parties filed material in accordance with the directions issued. The Applicant appeared at the hearing and gave evidence. Ms Laura Tierney, Industrial Relations Lead, was called to give evidence for the Respondent which was represented by Ms Julia Leeds of Dentons Australia Limited who was granted permission to appear pursuant to s 596(2) of the Act.

Background and evidence

[3] The Applicant commenced performing work as a Driver Partner (Driver) using the Uber Driver Platform (the Platform) on 19 February 2016¹, having accepted the terms of the Services Agreement on 19 February 2016². The Applicant accepted the more recent Services Agreement on 1 February 2024³. The Services Agreement requires Drivers to comply with the Respondent’s Community Guidelines⁴. The Community Guidelines include the following relevant requirements;

- (a) Under the subheading “inappropriate conduct and sexual assault and misconduct”:

“Please don’t comment on someone’s appearance or ask whether they are single or about their personal circumstances. Be mindful that people may not appreciate being asked about their personal life, including about children, work, where they live or their relationship status....

...Sexual assault and sexual misconduct of any kind is prohibited. Sexual assault and misconduct refers to sexual contact or behaviour without explicit consent of the other person...

...Any sexual conduct. Uber has a no-sex rule regardless of whether you know the person or they give you their consent. This includes activities such as sexual intercourse, masturbation or touching or exposure of sexual body parts....”

(b) Under the sub-heading “Be alert” that:

“...The law requires you to drive safely, and this includes assessing your level of fatigue prior to logging on, and throughout your driving time. Other activities you may have been doing during the day or night can contribute to fatigue. Remember, the only true preventative measure against fatigue is sleep. We review reports of crashes and potentially unsafe driving behaviour...”

(c) Under the sub-heading “Follow all laws” that:

“Everyone is responsible for knowing and obeying all applicable laws, including relevant health directions, airport rules and regulations when at the airport, and the rules of the road—including complying with traffic laws, signs and signals—at all times when using the Uber Marketplace Platform.

...

We review reports of crashes or traffic citations that may have happened during a trip or delivery, and other reports, including but not limited to those that may indicate poor, unsafe or distracted driving....”

[4] The Applicant conceded during cross examination that he had agreed to the Services Agreement on commencement and was required to comply with the Community Guidelines although he stated he had not read either. He nonetheless maintained that his conduct was consistent with the Respondent’s various requirements. He also accepted that breaching the Community Guidelines in respect of sexual misconduct would warrant a driver’s account being deactivated.

[5] Ms Tierney states that the Respondent communicates to Drivers through two means. For important messages such as warnings, preliminary deactivation notices and final deactivation notices, the Respondent sends an email to the Driver’s email address linked to the Driver’s account as well as a message to the inbox of the Driver on the Platform⁵.

[6] Ms Tierney emphasised that safety of all users of the Platform, including passengers (Riders), was paramount. To assist ensure safety, Riders who experience inappropriate conduct, particularly conduct of a sexual nature, are able to conveniently report that conduct to the Respondent via the Platform in good faith without adverse consequences. This includes not being required to appear in civil proceedings to substantiate their report. To do otherwise may

discourage misconduct reporting and undermine Rider safety⁶. Ms Tierney further explained that the Respondent has processes in place to assess the veracity of complaints made by Riders which includes assessing whether a complainant has a pattern of bad faith reporting, referring to *'fraudulent indicators'*. When reviewing complaints made in relation to the Applicant, no fraudulent indicators were identified⁷.

[7] The Applicant was subject to a number of previous complaints prior to the alleged serious misconduct that led to his deactivation. Those complaints were as follows;

- On 10 October 2018, the Respondent received a complaint⁸ (First Misconduct Complaint) from a Rider about a trip in which the Applicant was alleged to have made comments of a sexual nature. A representative of the Respondent sent an in-app message⁹ to the Applicant on 11 October 2018 notifying him of the complaint. No further action was taken.
- On 5 November 2018, the Respondent received a complaint¹⁰ (Second Misconduct Complaint) from a Rider about a trip in which the Applicant was alleged to have made comments of a sexual nature. A representative of the Respondent sent an in-app message to the Applicant on 6 November 2018 notifying him of the complaint. The Applicant's access to the Platform was temporarily blocked but subsequently restored with a warning that any further complaint that came through establishing a pattern of behaviour, might result in the removal of his access to the Platform¹¹.
- On 18 November 2018, the Respondent received a complaint¹² (First Dangerous Driving Complaint) from a Rider that the Applicant was speeding on a particular trip. Correspondence¹³ was sent to the Applicant on the Respondent's internal system regarding the complaint. No further action was taken against the Applicant over this incident.
- On 17 April 2019, the Respondent received a further complaint¹⁴ (Second Dangerous Driving Complaint) from a Rider that the Applicant appeared drowsy behind the wheel, making them feel unsafe. On receiving the complaint, a representative of the Respondent corresponded with the Applicant who was warned that further violations may lead to deactivation of his account¹⁵.

[8] The Applicant in his evidence strenuously denied the two misconduct allegations dating from 2018 relating to inappropriate sexual comments allegedly made to Riders¹⁶.

[9] On 29 May 2025, the Respondent received a complaint¹⁷ (Serious Misconduct Allegation) from a Rider about a trip performed by the Applicant on that day. The complaint was that the Applicant was masturbating while the Rider was a passenger in the Applicant's car. While the Rider did not see the Applicant exposing or touching his genitals from her position in the back seat of the vehicle, she gave a detailed description of the Applicant's behaviour, from which she inferred he was masturbating. This included the Rider observing the Applicant's physical movements, his breathing heavily, and reaching for tissues from the glove box and then using them on himself.

[10] Following receipt of the complaint, a representative from the Respondent's Community Operations team spoke to the Rider who reported the serious misconduct. Notes of that conversation were saved on the Respondent's system¹⁸. A representative of the Respondent then sent an in-app message¹⁹ to the Applicant on 29 May 2025, advising him of the complaint and that his access to the Platform had been temporarily restricted while the matter was being reviewed. On 30 May 2025, a representative of the Respondent spoke with the Applicant regarding the Serious Misconduct Allegation. A transcript²⁰ of this conversation was retained on the Respondent's system. During the discussion with the Respondent's representative, the Applicant denied touching himself inappropriately.

[11] On the 7 June 2025, the Respondent sent the Applicant an in-app message containing a preliminary deactivation notice (Preliminary Deactivation Notice) in the following terms; .

“Hi, Shahid.

This is from the Community Operations team.

You're receiving this message because a review of your account found that you have previously been reported for multiple instances of Sexual misconduct, which is a direct violation of your agreement with Uber and we are considering terminating your access to the Uber Driver app.

Please note that when we were made aware of these previous reports, we also made sure to notify you, these were sent on the following dates:

- Oct 11, 2018: Notified you of a report that you may have inappropriate comments and asking personal questions that occurred on a trip on 10th October 2018.
- Nov 06, 2018: Notified you of a report that you may have had asked personal questions that occurred on a trip on 3rd November 2018.

You should be able to find these in the Messages section of the Uber Driver app. You may also find other safety related notifications we have sent you in the past.

Reports of behaviour of this nature are extremely concerning and are in violation of our Community Guidelines, before a final decision is made, we are providing you with the opportunity to respond to this preliminary deactivation notice. During this period, we have suspended your access to the platform which takes effect immediately from the time and date of this notice 7th June 2025. Suspension of your access means that you will be unable to accept or complete trips/deliveries during the suspension period.

Your Options:

Respond to this Notice: You may provide an explanation or relevant information regarding the flagged activity. Please respond using the link below within 7 days from the date of this notice to ensure your input is considered.

Request a Discussion: You may also request a discussion with a representative of Uber Eats. If you wish to do so, please submit your request using the link below within 2 days.

Seek Support or Representation: You are entitled to appoint a person (other than a lawyer acting in a professional capacity) to support or represent you during this process.

.....²¹

[12] On 9 June 2025, the Applicant requested a discussion with a representative of the Respondent and also provided a written response to the Preliminary Deactivation Notice. This discussion took place on 11 June 2025. The Applicant’s written response was as follows;

“hi
short cut story, 2018 incident, i refused that false accusation as well, further more the current accusation, i havnt even been informed that what actually happened, i got told only that i touch myself in appropriate way, for your information driving contineously for 8 to 12 hours, i do touch my hair and beard, my weight is 114kg, due to big tummy i do adjust my seatbelt most of time, how the hell i know customer is thinking who is sitting behind me, i dont even remember since covid if any customer sits at the front to feel uncomfortable, short story again, i am professional driver providing ride and taxi services since 2015, completing more than 3000+ trips, and you taking these false accusation against me and blocked my account? on what base? be realistic and get yourself on the road, and then find out how customer treats us like a slave sometime, sometime they request an extra stop without adding in their app, they do request drive through, now i feel like I may did refuse any customer request out of uber trips where they may did complain against me, in email, it mentioned that talk to uber eats representative, my account is uberx trip account, neber done ubereats? please confirm recent false accusation was regarding what? as what if my account is been used by someone else on ubereats???

kindly if there is not any aproved accusation against me please remove from my file, because that is also against law until proven guilty... also kindly tell me my rights under fyi what if my account is deactivated, where i can apply, as i can see uber literally dont bother about drivers, false accusation was applied on my account 2 weeks ago, without any proof and just on complain base my account was restricted.. why? kindly response to my question... thanks regards shahid”²²

[13] The Applicant in his response on 9 June 2025 vehemently denied the allegation and maintained his denial when giving evidence in these proceedings. He steadfastly rejected that he had inappropriately touched himself during a passenger trip on 29 May 2025 and further claimed that the Respondent had failed to provide him with sufficient details of the complaint to enable a proper response²³. He also claims that he was not provided with the internal records at the time of the 29 May 2025 complaint that are now relied upon by the Respondent in these proceedings²⁴.

[14] During cross-examination, the Applicant was questioned in relation to the particular trip on 29 May 2025 and was questioned on the details of the complaint. He stated that he recalled calling the Rider before he picked her up that day, but this was not unusual; it was at times necessary to speak with the customer regarding their specific location prior to, or on arrival at the specified pick-up address. He did not recall the car shaking, did not recall winding his

window down or breathing heavily as claimed in the complaint. He stated that he did not keep tissues in the glove box but kept them in the centre console of his car. He also rejected that he was constantly staring at the Rider in the rear-view mirror while driving. The Applicant confirmed that he only received the specific details of the 29 May 2025 complaint when the Respondent filed its material in the present proceedings.

[15] The Respondent's decision-making process in relation to deactivation of the Applicant's account was set out in a document held in its records. The document reveals the Respondent's investigation process included receipt of a written and verbal complaint from the Rider as well as a written and verbal response from the Applicant. The Respondent also considered the Applicant's previous complaints, that there were no indicators of 'fraudulent indicators' that would suggest a false allegation by the Rider, and concluded that the Applicant's response was not sufficient to refute the Serious Misconduct Allegation²⁵. On 13 June 2025, a member of the Respondent's Community Operations Team notified the Applicant via an in-app message of the decision to permanently deactivate his access to the Platform on the grounds of serious misconduct (Final Deactivation Notice). The Final Deactivation Notice said as follows;

"Hello Shahid,

After carefully reviewing your account and the information you submitted as part of your response, we've decided to terminate your access to the Uber Driver app for the reasons outlined in the preliminary deactivation notice previously sent to you. This decision is final.

Your preliminary deactivation notice can be found in your email inbox or the inbox of the Uber Driver app.

This deactivation will take effect immediately upon receipt of this email.

Your final payment will be deposited into your account during the next payment cycle."²⁶

[16] According to the Respondent's records, the Applicant earned \$32,535.06 between 13 June 2024 and 13 June 2025, with average weekly earnings for that period of \$684.85²⁷. The Applicant arrived at a different average weekly earnings figure by basing his calculation on the period from 14 October 2024 to 29 May 2025. In his calculation the Applicant excluded the 4-month period from 13 June – 14 October 2024 on the basis that he only started driving on a full-time basis for the Respondent from 14 October 2024. By excluding the 13 June – 14 October 2024 period of earnings, an average weekly earnings figure of \$951.03 is arrived at by the Applicant²⁸.

Initial matters

[17] It is uncontroversial that the Applicant was deactivated by the Respondent on 13 June 2025 and as such he is able to make an application (s 536LU(1)). His earnings from performing work for the Respondent in the 12-month period immediately preceding his deactivation were \$32,535.06. These earnings fall below the contractor high income threshold that if met or exceeded would otherwise preclude the application being made (s 536LU(2)).

[18] Having found the Applicant was deactivated and that his earnings were below the contractor high income threshold, I am obliged under s 536LW of the Act to deal with the following initial matters before considering the merits of the application;

- (a) whether the application was made within the period required in subsection 536LU(3);
- (b) whether the Applicant was protected from unfair deactivation within the meaning of s 536 LD; and
- (c) whether the deactivation was consistent with the Digital Labour Platform Deactivation Code.

[19] Relevant to the determination of the initial matters I am satisfied that;

- the Applicant was deactivated on 13 June 2025 and filed his unfair deactivation application on 30 June 2025, that latter date being within 21 days of the date of his deactivation; and
- the Applicant was an employee like worker, he performed work through or by means of the Respondent's digital platform and had been performing work for the Respondent on a regular basis for a period of at least 6 months at the time of his deactivation.

[20] Having regard to the above, I am satisfied that the application was made within the required period (s 536LU(3)) and that the Applicant was protected from deactivation at the time he was deactivated (s 536LD). The third initial matter about which I must be satisfied before considering the merits of the application, is whether the Applicant's deactivation was consistent with the Code (s 536LW(c)). A person's deactivation will be consistent with the Code, if, at the time of the deactivation, the digital labour platform operator complied with the Code in relation to the deactivation (s 536LJ(3) of the Act). I now turn to consider whether the Respondent complied with the Code.

Whether deactivation was consistent with the Digital Labour Platform Deactivation Code

[21] Section 8(1) of the Code requires an employee like worker to be given a warning notice in writing before deactivation. Section 8(2) of the Code sets out the matters that must be dealt with in the warning. Section 9 of the Code provides an exception to the requirement to provide such a warning. That is where a digital labour platform operator '*believes on reasonable grounds*' that the worker's conduct or capacity warrants immediate modification or suspension of access to the digital labour platform, or it is not reasonable to allow continued access to the platform.

[22] In the present case, the Applicant did not receive a warning prior to deactivation. I am however satisfied that the Respondent was not required to provide a warning in accordance with s 8 of the Code. That is because the Respondent had reasonable grounds to believe the alleged misconduct engaged in by the Applicant, that of masturbating while a passenger was in his vehicle, presented a risk to the health and safety of riders. The alleged conduct warranted

immediate suspension of the Applicant's access to the Platform, and it was not in my view reasonable to allow the Applicant to continue perform work via the Platform while an investigation was conducted. I am satisfied that suspension of the Applicant's access to the Platform without provision of a warning was permitted by s 9 of the Code having regard to the nature of the Applicant's alleged misconduct.

[23] Turning now to s 11 of the Code which deals with the requirement to provide a preliminary deactivation notice. The Preliminary Deactivation Notice set out above at [11] fails to specify the reason relating to the Applicant's conduct (s 11(1)(a) of the Code). It references earlier allegations of misconduct from 2018 but fails to specify the alleged misconduct of 29 May 2025. By this failure, the Preliminary Deactivation Notice also fails to include sufficient information that would '*enable a reasonable person in the position of an employee like worker to understand the matters mentioned on subsection (1)*' (s 11(2) of the Code). I am consequently not satisfied that the Respondent complied with all of the relevant requirements of s 11 of the Code.

[24] I also observe that the Respondent failed to comply with s 14(5)(b) & 14(6) of the Code, in that the Final Deactivation Notice fails to specify the reason for the termination. By that failure the Final Deactivation Notice did not include sufficient information to enable a reasonable person in the position of the Applicant to understand the matters set out in the Final Deactivation Notice. The Final Deactivation Notice merely references the reasons included in the Preliminary Deactivation Notice. As I have already found, the Preliminary Deactivation Notice was deficient in that it failed to include the reasons for Applicant's preliminary deactivation. In relying on the deficient Preliminary Deactivation Notice, it must then follow that the Final Deactivation Notice was also deficient and therefore failed to comply with ss 14(5)(b) & 14(6) of the Code.

[25] The Code contains various mandatory requirements including those dealt with above. The mandatory nature of those obligations is made clear by use of the term '*must*' when describing specific actions that must be taken by digital platform operators in complying with relevant requirements of the Code. By the Respondent failing to meet the mandatory requirements set out in ss 11(1)(a), 11(2), 14(5)(b) & 14(6), I am satisfied on the basis of these failures that the Applicant's permanent deactivation from the Platform was not consistent with the Code. It is therefore unnecessary for me to deal with the balance of the relevant Code requirements.

[26] Having dealt with the preliminary matters set out in s 536LW, it is necessary for me to now turn to the merits of the case.

Merits of the application

[27] In considering whether the Applicant's deactivation was unfair, it is useful to first set out the relevant statutory requirements. Section 536LF defines where a person has been unfairly deactivated in the following terms;

“536LF What is an unfair deactivation

A person has been *unfairly deactivated* if the FWC is satisfied that:

- (a) the person has been deactivated from a digital labour platform; and

- (b) the deactivation was unfair; and
- (c) the deactivation was not consistent with the Digital Labour Platform Deactivation Code.”

[28] Section 536LH lists the criteria to be considered by the Commission in determining whether a deactivation was unfair;

“536LH Criteria for considering whether a deactivation was unfair etc.

- (1) In considering whether it is satisfied that a person’s deactivation was unfair, the FWC must take into account:
 - (a) whether there was a valid reason for the deactivation related to the person’s capacity or conduct; and
 - (b) whether any relevant processes specified in the Digital Labour Platform Deactivation Code were followed; and
 - (c) any other matters that the FWC considers relevant.
- (2) Despite subsection (1) and any other provision of this Part, a deactivation that occurs because of serious misconduct of the person who was deactivated is not unfair.
.....”

[29] As will be apparent from reviewing the statutory provisions set out above, for a person to have been unfairly deactivated, the Commission must be satisfied in respect of all three elements set out in s 536LF, except where serious misconduct is established. Where serious misconduct of the person is objectively established to the Commission’s satisfaction, the deactivation will be taken not to be unfair. That is regardless of the digital platform operator’s compliance with the Code or any other matters the Commission may otherwise consider relevant.

Whether there was a valid reason for deactivation (s 536LH(1)(a))

[30] In the present case, the Respondent submits that the Applicant was deactivated for serious misconduct and in the alternative, that there was a valid reason for his deactivation. In order to determine whether the Applicant’s alleged misconduct constitutes serious misconduct it is necessary for me to deal with the first limb of s 536LH(1) to determine whether there was a valid reason for deactivation and whether that valid reason, if established, rises to the level of serious misconduct.

[31] There is significant case law going to the meaning of the term ‘*valid reason*’ in the context of s 387(a) of the Act, where it is one criterion to be considered when assessing whether a dismissal was unfair. The approach of the Commission in applying the term ‘*valid reason*’ in dealing with an application for an unfair deactivation by an employee-like worker pursuant to s 536LH(1)(a) was dealt with by a Full Bench in *Hotak v Portia Pacific Pty*²⁹ (Hotak) where it relevantly stated as follows;

“[94] Turning now to the merits of the application. We must take into account each of the matters specified in s 536LH of the Act. As to whether there was a valid reason for the

deactivation related to the person's capacity or conduct (s 536LH(1)(a)), the same language is found in s 387(a) of the Act. For that reason, we consider that the same principles should apply in determining whether there was a valid reason within the meaning of s 536LH(1)(a) of the Act. They may be summarised as follows:

- (a) In cases relating to alleged conduct, the Commission must make a finding, on the evidence provided, whether, on the balance of probabilities, the conduct occurred.
- (b) It is not enough for a digital labour platform operator to establish that it had a reasonable belief that the worker engaged in particular conduct.
- (c) The digital labour platform operator bears the evidentiary onus of proving that the conduct on which it relies took place.
- (d) In cases where allegations of serious misconduct are made, the Briginshaw standard applies so that findings that a worker engaged in the misconduct alleged are not made lightly.
- (e) It is necessary to consider whether the digital labour platform operator had a valid reason for the deactivation of the employee-like worker, although it need not be the reason given to the worker at the time of the deactivation.
- (f) A "valid" reason for deactivation is one that is "sound, defensible or well founded" and not "capricious, fanciful, spiteful or prejudiced." . A reason that is "valid" will involve something more than a minor failing or trivial misdemeanour, and must be of sufficient gravity or seriousness to justify deactivation.

[95] It is clear from s 536LH(2) of the Act that a deactivation that occurs because of serious misconduct of the person who was deactivated is not unfair. In cases involving allegations of serious misconduct against an employee-like worker, it is not enough for the digital labour platform operator to hold a reasonable belief that the worker engaged in the conduct. The requirement for the deactivation to have occurred "because of serious misconduct of the person who was deactivated" in s 536LH(2) means that the digital labour platform operator has the evidentiary burden to prove that the alleged conduct occurred and that it meets the definition of serious misconduct in the regulations." (Citation omitted)

[32] I respectfully concur with and intend to apply the above principles to the present matter before me.

[33] I now turn to the grounds of misconduct that the Respondent submits constitutes serious misconduct and/or establishes a valid reason for the Applicant's deactivation. The grounds relied on by the Respondent are that: firstly, the Applicant engaged in serious misconduct by engaging in inappropriate physical behaviour of a sexual nature while a Rider was in the Applicant's car on 29 May 2025. Secondly, it is submitted that the Applicant engaged in ongoing and repeated misconduct that established a valid reason for deactivation. By this

second ground, the Respondent refers to the dangerous driving and misconduct complaints dating from 2018 and 2019.

[34] Dealing with the first ground relied on by the Respondent: it brought no direct evidence from the Rider whose allegations regarding the alleged incident on 29 May 2025 were said by the Respondent to have been substantiated through the course of its investigation. The evidence submitted by the Respondent was confined to a copy of the Rider's initial complaint and the transcript of a discussion between the Rider and a representative of the Respondent on 30 May 2025. The Rider's description of what she observed the Applicant doing during the trip while detailed did not include her actually observing the Applicant exposing or touching his genitals. This was due to her location in the rear seat of the vehicle. She did however infer from observing his other physical movements that he was masturbating while driving the vehicle.

[35] As the Rider was not called to give evidence in these proceedings, there was no opportunity to test the allegations put forward by her. While I accept the Respondent's submission that I am able to weigh the material that is in evidence, including the hearsay evidence provided, the allegation of inappropriate sexual behaviour is extremely serious, and it requires me to have regard to the *'Briginshaw standard'*. The Applicant vehemently denies the inappropriate sexual behaviour allegation. As no direct witness evidence was put forward by the Respondent to rebut the Applicant's denial, the hearsay evidence advanced by the Respondent provides a fragile base upon which to find that the Applicant engaged in the alleged conduct. I am consequently not satisfied on the evidence before me that the Applicant engaged in the alleged inappropriate sexual behaviour towards the complainant Rider on 29 May 2025. Having made that finding, it must follow that I am not satisfied the Applicant was deactivated for serious misconduct within the meaning of regulation 1.07 of the *Fair Work Regulations*.

[36] Turning to the alternate submission that the Applicant engaged in ongoing and repeated inappropriate behaviour, the Respondent relies on the two complaints of dangerous driving made against the Applicant and two complaints of the Applicant making comments of a sexual nature. All of these complaints date to October/November 2018 and April 2019, were investigated at the time and dealt with by the Respondent. The Applicant's access to the Platform was briefly suspended as a result of the Second Misconduct Allegation while an investigation was undertaken. When reactivated following the investigation, the Applicant was warned on 6 November 2018 that any further complaints of inappropriate behaviour, establishing a pattern of behaviour, may result in a review of his access to the Platform.

[37] The complaints relied on by the Respondent date to 2018/2019 and are in my view 'stale'. The Respondent investigated and closed those matters out at the time and there have been no further incidents prior to the 29 May 2025 complaint. In these circumstances, the Respondent's reliance on the prior alleged conduct is misconceived in my view. The difficulty for the Respondent in relying on that prior alleged misconduct is not just the aged nature of those complaints. The Respondent also confronts the challenge of not having brought any probative evidence going to the previous alleged misconduct. Consequently, I am not satisfied that the Applicant has engaged in a pattern of repeated and ongoing misconduct that would establish a valid reason for his deactivation.

[38] It follows from the foregoing that I am not satisfied there was a valid reason for the Applicant's deactivation. This weighs in favour of a finding that the Applicant's deactivation was unfair.

Whether whether any relevant processes specified in the Code were followed (s 536LH(1)(b))

[39] I have previously found that the Respondent failed to comply with mandatory requirements in ss 11 & 14 of the Code. That was because of the Respondent's failure to specify the nature of the alleged 29 May 2025 misconduct in the Preliminary Deactivation Notice and by that failure it did not include sufficient information that would have enabled the Applicant to properly respond. The Respondent also failed to specify the reason for deactivation in the Final Deactivation Notice. The Failure of the Respondent to comply with relevant requirements of the Code weighs in favour of a finding that the deactivation of the Applicant was unfair.

Any other matters (s 536LH(1)(c))

[40] The Applicant has raised the impact of the deactivation on his personal and financial circumstances. He claims to have lost his primary source of income and suffered severe financial hardship as well as distress, humiliation and reputational damage because of the allegations. The Applicant estimated his lost income at \$19,695.83 for the period 29 May - 15 October 2025. That figure was based on his average weekly earnings from his work for the Respondent of \$951.03 for the 8-month period preceding his deactivation. The Respondent challenges that calculation and refers to income earned by the Applicant since his deactivation. I nonetheless accept that the Applicant has lost a significant amount in earnings since deactivation with the consequent impact on his personal and financial circumstances. I also note that at the time of his deactivation the Applicant had performed work for the Respondent as a Driver for over 9 years. These matters weigh in favour of a finding that the deactivation was unfair.

[41] For its part, the Respondent sought to rely on the historical complaints made against the Applicant dating to 2018/2019 and what it described as a pattern of repeated and ongoing misconduct which it submits weighs in favour of a finding that the deactivation was not unfair. I accept that the Applicant was the subject of four complaints in 2018/2019 but as I have already stated above, the two inappropriate behaviour complaints on which the Respondent seeks to rely were not supported by any direct probative evidence. In any case, there were no further complaints or adverse performance ratings in evidence for the intervening period from April 2019 to the alleged incident on 29 May 2025. Those prior complaints do not support the Respondent's submissions that the Applicant engaged in ongoing and repeated inappropriate behaviour. Given the passage of time, the prior alleged conduct is a neutral consideration.

Conclusion on whether deactivation was unfair

[42] In determining whether the deactivation was unfair I am required to take into account the matters set out in s 536LH(1). In weighing those matters I am satisfied that the Applicant's deactivation was unfair. Several considerations weigh in favour of that finding. The Respondent failed to comply with the relevant processes specified in the Code, the evidence before the Commission does not support the serious allegations made against the Applicant, and a valid reason for his deactivation has not been established. Further, the Applicant performed work for

the Respondent over a lengthy period—approximately 9 years prior to his deactivation and the deactivation’s impact on the Applicant has been significant, both personally and financially. No other matters weigh against a finding that the deactivation was unfair.

[43] Having found that; the Applicant was deactivated from the Platform on 13 June 2025, his deactivation was unfair and that the Respondent did not comply with the Code, it follows, and I am satisfied that the Applicant was subject to an unfair deactivation within the meaning of s 536LF.

Remedy

[44] Having found that the Applicant was unfairly deactivated I now turn to consider the question of remedy. Section 536LP of the Act confers a discretion to the Commission to order a person’s reactivation if the person was protected from unfair deactivation (s 536LP(1)(a)), was unfairly deactivated (s 536LP(1)(b) and made an application under s 536LU. I have made dispositive findings in relation to each of these matters above.

[45] The Respondent submits that I should decline to exercise my discretion to order the Applicant’s reactivation on the basis it would be inappropriate to do so. This is due to the Applicant’s inappropriate conduct of a sexual nature and dangerous driving and that an order for reactivation would pose a safety concern to Riders and other road users having regard to the history of complaints.

[46] The Respondent’s above-referred submissions are rejected. I have found that the allegation made against the Applicant arising from the 29 May 2025 Rider complaint was not sustained to the level of establishing a valid reason for deactivation let alone constituting serious misconduct. Nor am I persuaded that reliance on seven-year-old complaints, unsubstantiated by probative evidence, establishes a pattern of ongoing and sustained inappropriate conduct by the Applicant. I further note that as there is no capacity for the Commission to order compensation (s 536LP(3)) in lieu of reactivation. To accept the Respondent’s primary submission on remedy would result in no remedy at all for the Applicant. This also weighs against the Respondent’s submission.

[47] Having regard to the above, I have determined to exercise my discretion and make an order requiring the Respondent to reinstate the Applicant’s access to the digital labour platform operated by the Respondent within 7 days of the date of this decision, and that he be engaged on the same terms and conditions as those on which he was engaged immediately before his deactivation.

[48] The Applicant also seeks an order to restore lost pay under s 536LQ(3)-(4) of the Act. Given the Applicant has suffered a financial loss as a consequence of his unfair deactivation, I consider it appropriate to make an order for the Respondent to pay the Applicant an amount of remuneration lost as a result. The task required in determining the quantum of compensation was set out by the Full Bench in *Hotak* as follows;

“

- (a) **Assessing lost earnings:** Determine the amount of remuneration the worker would have earned from the digital labour platform operator during the period between deactivation and reactivation. In many cases, calculating the average of the worker's weekly earnings from the digital labour platform in the period leading up to the deactivation will provide a reasonable estimate of the earnings they would likely have received had they continued working.
- (b) **Deducting substitute earnings:** Subtract any earnings the worker received from other employment or working arrangements during the period between deactivation and reactivation, but only to the extent that such work would not have been undertaken had the worker remained active on the platform. That is, if the worker had a second job and would, in the counterfactual scenario, have continued working in that job to the same extent, those earnings do not replace remuneration lost because of the deactivation.

There will need to be a slight adjustment to this calculation if the worker's actual reactivation takes place after an order for reactivation is made. In such circumstances, s

536LQ(4) of the Act requires that the Commission take into account:

- (i) the amount of any remuneration earned by the person from work of any kind during the period between the deactivation and the making of the order for reactivation; and
 - (ii) the amount of any remuneration reasonably likely to be so earned by the person during the period between the making of the order for reactivation and the actual reactivation.
- (c) **Deducting avoided expenses:** Subtract any expenses the worker would have incurred had they continued working through or by means of the platform during the period between deactivation and reactivation. This ensures that any order to restore lost pay under s 536LQ(3) of the Act is confined to "remuneration lost, or likely to have been lost, because of the deactivation".³⁰

[49] Applying the above-referred methodology in the present case results in the following;

- (1) **Assessing lost earnings:** The parties have arrived at divergent average weekly earnings figures as discussed at [16] above. I prefer the Applicant's calculation as his earnings in the 4-month immediately prior to 14 October 2024 were nominal, totalling only \$109.24. That period should be excluded from the calculation. I am consequently satisfied that a calculation of the Applicant's lost earnings since deactivation may be calculated on the basis of average weekly earnings of \$951.03. Applying that average weekly earnings figure from the date of deactivation on 13 June 2025 to the date of this decision, being a period of 17.7 weeks, results in a lost earnings figure of \$16,833.23.
- (2) **Deducting substitute earnings:** The Applicant agreed that he earned income from other sources since deactivation. This included \$9,000 received for work performed for the Baysec Group Pty Ltd (Baysec)³¹ which he accepted were new earnings received

since deactivation. He also agreed that he had earned income through performing work for Didi although he gave evidence that he performed work for Didi prior to deactivation. This claim was supported to some extent by bank statements produced³² although it was apparent from reviewing the bank statements that income received from Didi increased significantly after deactivation. For example, in the 2-month period prior to deactivation he earned approximately \$642 in performing work for Didi which if extrapolated over a 4-month period results in earnings of \$1284. In the 4-month period following deactivation he earned approximately \$3044 from work for Didi. Deducting the figure of \$1284 from \$3044 results in an estimated increase in earnings of \$1,760. This figure along with the \$9,000 received from Baysek will be deducted from the lost earnings figure above. This results in a lost earnings figure of \$6,073.23.

(3) **Deducting avoided expenses:** The Respondent did not press for a reduction on the basis that it would be a nominal amount. I consequently make no deduction for this element.

[50] Based on the above, I intend to make an order for the payment of lost earnings in the amount of \$6,073.23. Such an order will not constitute payment of compensation prohibited by s 536LP of the Act.

Conclusion

[51] For the reasons given, the Applicant was protected from unfair deactivation at the time he filed his unfair deactivation application in the Commission on 30 June 2025. The Applicant was deactivated from the Respondent's digital labour platform, and his deactivation was unfair. I consider it appropriate to exercise my discretion to make an order for the Applicant's reactivation together with an order to restore lost earnings in the following terms.

1. Pursuant to s 536LP(1) of the Fair Work Act 2009 (Cth), the Fair Work Commission orders that the Respondent must reinstate the Applicant's access to the digital labour platform operated by the Respondent within 7 days of this decision on the basis that he be engaged on the same terms and conditions as those on which he was engaged by the Respondent immediately before his deactivation.
2. The Respondent pay the sum of \$6,073.23 gross less any taxation as required by law to the Applicant for lost earnings within 14 days of the date of this decision.
3. This order commences operation on 17 October 2025.

[52] An order giving effect to this decision will be issued concurrently with this decision.



DEPUTY PRESIDENT

Appearances:

Mr S Mansour, Applicant
Ms J Leeds, for the Respondent

Hearing details:

15 October 2025
Melbourne

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¹ Exhibit R1, Witness Statement of Ms Lauren Lillian Tierney, dated 21 August 2025, Annexure D, Business record of Applicant's first trip

² Exhibit R1, Annexure C, Business record of Applicant's acceptance of Services Agreement

³ Ibid

⁴ Exhibit R1, Annexure B, Uber Community Guidelines

⁵ Exhibit R1, at [7]

⁶ Exhibit R1, at [8]

⁷ Exhibit R1, at [9]

⁸ Exhibit R1, Annexure I, First Misconduct Complaint, dated 11 October 2018

⁹ Exhibit R1, Annexure J, Correspondence between Respondent and Applicant re. First Misconduct Complaint, dated 11 October 2018

¹⁰ Exhibit R1, Annexure K, Second Misconduct Complaint, dated 5 November 2018

¹¹ Exhibit R1, Annexure L, Correspondence between Respondent and Applicant re Second Misconduct Complaint, dated 6 November 2018

¹² Exhibit R1, Annexure Q18, First Dangerous Driving Complaint, dated 18 November 2018

¹³ Exhibit R1, Annexure R, Correspondence with Applicant regarding First Dangerous Driving Complaint, dated 18 November 2018

¹⁴ Exhibit R1, Annexure S, Second Dangerous Driving Complaint, dated 17 April 2019

¹⁵ Exhibit R1, Annexure T, Correspondence with Applicant regarding Second Dangerous Driving Complaint, dated 17 April 2019

¹⁶ Exhibit A1, Witness Statement of Shahid Mansour, at [6]-[7]

¹⁷ Exhibit R1, Annexure E, Inappropriate Conduct Complaint, dated 29 May 2025

¹⁸ Exhibit R1, Annexure F, Transcript of call with complainant Rider, dated 29 June 2025

¹⁹ Exhibit R1, Annexure G, Correspondence from Respondent to Applicant re Inappropriate Conduct Complaint, dated 29 May 2025

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- ²⁰ Exhibit R2, Second Witness Statement of Laura Lillian Tierney, dated 10 October 2025, Annexure B, Transcript of call with Applicant, dated 30 May 2025
- ²¹ Exhibit R1, Annexure M, Preliminary Deactivation Notice
- ²² Exhibit R1, Annexure N, Record of Applicant response to Preliminary Deactivation Notice, dated 9 June 2025
- ²³ Exhibit A1, at [10]-[12]
- ²⁴ Exhibit A1, at [16]-[17]
- ²⁵ Exhibit R1, Annexure O, Customer Deactivation Appeals record, dated 6 October 2025
- ²⁶ Exhibit R1, Annexure p, Final Deactivation Notice
- ²⁷ Exhibit R2, at [7], Annexure D, Average Weekly Schedule
- ²⁸ Exhibit A1, Annexure 1, Schedule of Loss
- ²⁹ [\[2025\] FWC FB 214](#)
- ³⁰ *Hotak* at [94]
- ³¹ Exhibit A3, Commonwealth Bank Account Statement
- ³² Exhibit A4, Westpac Bank Account Statement