



DECISION

Fair Work Act 2009

s.536LU - Application for an unfair deactivation remedy

Anwar Kareem Al Hussein

v

Rasier Pacific Pty Ltd

(UDE2025/134)

COMMISSIONER SLOAN

SYDNEY, 24 OCTOBER 2025

Application for an unfair deactivation remedy – applicant was protected from unfair deactivation – complaint of sexually inappropriate behaviour – whether applicant guilty of serious misconduct – serious misconduct not established – Digital Labour Platform Deactivation Code applied – Code not complied with – deactivation unfair – order for reactivation made – parties to confer on calculation of quantum of order to restore lost pay

[1] Anwar Kareem Al Hussein commenced performing work as a driver through the Uber Driver App in 2016. On 10 June 2025, Raiser Pacific Pty Limited (“Uber”) terminated his access to the Uber Driver App following a finding that he had engaged in “sexually inappropriate behaviour”.

[2] Mr Al Hussein denies the allegations against him. On 25 June 2025 he made an application under section 536LU of the *Fair Work Act 2009* (“Act”)¹ for an unfair deactivation remedy. He sought an order that his access to the Uber Driver App be reinstated and that Uber pay him the remuneration he lost because of the deactivation.

[3] Uber opposed the application. In summary, Uber contended that Mr Al Hussein was deactivated because of serious misconduct. As a result, the Digital Labour Platform Deactivation Code (“Code”) had no application² and the Commission could not find that the deactivation was unfair.³ In the alternative, Uber contended that the deactivation was consistent with the Code, and that as a result the Commission could not be satisfied that it was an unfair deactivation.⁴ In the further alternative, Uber submitted that the deactivation was otherwise not unfair.

Determination

[4] I have determined that Mr Al Hussein was unfairly deactivated. I will make an order for Mr Al Hussein’s reactivation, together with an order to restore lost pay.

[5] These are my reasons.

The relevant factual context

[6] Mr Al Hussein gave evidence in support of his case. Uber relied on a statement of Emilee Fairlie, Senior Manager, Industrial Relations at Uber Australia Pty Ltd. Each of them gave additional oral evidence at the hearing.

Mr Al Hussein's engagement with Uber

[7] Mr Al Hussein first began performing work through the Uber Driver App on 30 July 2016, under a services agreement with an affiliated entity of Uber. He later entered into three other services agreements with Uber, most recently on 31 August 2024 ("Services Agreement").⁵

[8] The Services Agreement required Mr Al Hussein, when providing transportation services, "at all times do so safely and in a professional manner with due skill, care, courtesy and diligence".⁶ It also required him to comply with the Uber Community Guidelines Australia and New Zealand ("Community Guidelines").⁷ It provided that violation of the Community Guidelines would allow Uber to restrict or remove Mr Al Hussein's access to the Uber Driver App.⁸

[9] The Community Guidelines include the following:⁹

"Our guidelines were developed to help make every experience feel safe, respectful and positive. ...

...

Inappropriate conduct and sexual assault and misconduct

We all value our personal space and privacy. It's OK to chat with other people. But 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.

Personal space and privacy should be respected at all times. The following list provides examples of inappropriate conduct but is not exhaustive:

- Do not engage in behaviours or make comments that could make people feel uncomfortable.
- Do not ask personal questions (for example, about relationship status or sexual orientation). Certain conversations that could be perceived as harmless can be offensive. Avoid discussions about your own or someone else's sex life, using explicit language, or making jokes about sex.

- Do not comment on appearance (for example, derogatory or ‘complimentary’ comments), perceived gender identity or sexual orientation.
- Do not make explicit comments or gestures (for example, slurs, or graphic or suggestive messages).
- Do not flirt (for example, nonverbal [e.g., nudges, whistles, winks], suggestive flirting, or being too physically close).
- Do not display indecent material (for example, sexually suggestive objects or pictures).
- 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.

How Uber enforces our guidelines

Losing access to the Uber Marketplace Platform may be disruptive to your life or to your business. That’s why we believe it is important to have clear standards that explain the circumstances in which you may lose access to the Uber Marketplace Platform. If you violate any applicable terms of your contractual agreement with Uber, or any other applicable policies, any one of these Community Guidelines or any additional policies and standards that are communicated by Uber to you from time to time, you can lose access to all or part of the Uber Marketplace Platform. ...

...

Not following any one of our guidelines may result in the loss of access to all or part of the Uber Marketplace Platform. This can include reported violations of our Community Guidelines and certain actions you may take outside of the Uber Marketplace Platform, including but not limited to other platforms, if we determine that those actions threaten the safety of the Uber community, our employees and contractors or cause harm to Uber’s brand, reputation or business. And if the issues raised are serious or a repeat report, or you refuse to cooperate, you may lose access to the Uber Marketplace Platform. Any behaviour involving violence, sexual misconduct, harassment, fraud or discrimination, or deceptive, illegal or unsafe activity, while using the Uber Marketplace Platform can result in the immediate loss of access to the Uber Marketplace Platform. ...”

[10] Mr Al Hussein accepted that he had read the Services Agreement and the Community Guidelines.

Reports concerning Mr Al Hussein’s behaviour

[11] On 7 August 2016, Uber received a message from a rider who had undertaken a trip with Mr Al Hussein (“2016 Report”). The message was in these terms:¹⁰

“When driving down a dark street driver asked me if i trusted him...then asked if I lived by myself/ I felt very unsafe and it was quiet scary” (reproduced verbatim)

[12] On 26 May 2018, Uber received a message from another rider who had undertaken a trip with Mr Al Hussein (“2018 Report”). That message was in these terms:¹¹

“The driver was nice, his car was all retro-fitted with blue lights so I asked about it. He seemed nice enough, but then was asking if I knew how to drift. It was rainy outside and he continued to talk about cars, which I didn’t mind but got the impression he is a bit of a rev head - asked me if I like subwoofers as he has a big one in the boot. Further to this he started to say things that made me a bit uncomfortable - like ‘you’re the coolest girl I’ve ever met’, proceeding to ask me who I love with *[sic]* etc. I could be mistaken but I felt he was trying to hit on me and I didn’t really feel comfortable. As a driver he was a nice enough person, but it would be good to skip the talk about drifting and subwoofers, and definitely avoid saying anything that feels like a pick up tactic.”

[13] On 10 January 2019, Uber received a third message from a rider in respect of Mr Al Hussein (“2019 Report”). That message was in these terms:¹²

“My driver was flirting with me despite my asking him not too *[sic]*, he asked for a kiss at the end of the ride, and accepted a \$500 tip that I only gave because of how inebriated I was.”

[14] Uber conducted a review into the 2019 Message. While it did so, Mr Al Hussein’s access to the Uber Driver App was suspended. Mr Al Hussein had two conversations with persons at Uber on 11 January 2019. One of the conversations was with a person from Uber’s Community Operations Team. There is a written record of that conversation. On 13 January 2019, a person from Uber’s Community Operations Team spoke to the rider. That conversation was also recorded in writing. In that conversation, the rider stated that Mr Al Hussein hugged her.

[15] The outcome of the review (on the evidence before me) was the following message from Uber to Mr Al Hussein on 19 January 2019:¹³

“hi, ali. thank you for your time and patience over the past few days. we appreciate your cooperation. following the review of feedback we received, i am letting you know that your access to the uber app is now active. please be aware that if any future complaints of inappropriate behaviour come through, establishing a pattern of behaviour, we will have to review your access to the app in accordance with the agreed-to terms & conditions. we invite you to read uber’s community guidelines , a shared standard for respect, accountability, and common courtesy that we expect all users of the app to observe. thanks for your understanding.” (reproduced verbatim)

Events leading to deactivation – “2025 Report”

[16] On 24 May 2025, Uber received “a request for information via its law enforcement portal from New South Wales Police who were investigating a complaint from a Rider”.¹⁴ The next day, Uber sent a message to Mr Al Hussein informing him that it had “placed [his] account on hold” while it conducted a review into “one of [his] recent trips”.¹⁵

[17] Uber’s evidence included a record of a conversation said to have taken place between a member of Uber’s Community Operations Team and an unidentified person (“Account Holder”) at 11.57am on 27 May 2025. That record included the following:¹⁶

RIDER Hello.

UBER Hi, this is [redacted by Uber] calling from the Community Operations Team at Uber. Am I speaking with [redacted by Uber]

RIDER Yes

UBER Thank you so much for confirming. I just wanted to call you as we’ve received a report about non consensual kissing on a recent trip that you were on. Is now a good time to chat?

RIDER Is this in regards to [redacted by Uber]

UBER [Redacted by Uber] I’m not too sure. So I do see that a trip was booked under your account of nonconsensual kissing, which is why I am contacting you. If you are aware of this trip and another person was involved, just let me know. Was that the case?

RIDER Yeah, It wasn’t. It wasn’t me. It was. I booked the Uber for my friend.

UBER Okay, that’s completely fine. Would it be okay if I could just gather some of your information regarding this incident and if it’s okay as well, just gather her details.

RIDER Yes, sorry, where did you say you were from again?

UBER I’m from Uber.

RIDER From where?

UBER Uber.

RIDER Uber, oh okay. Wait, has the police not contacted you?

UBER So we have been contacted from law enforcement, which is why we are just talking to you to gather some more information about this incident to gather our report.

RIDER Yep.

UBER So is now a good time to chat, would that be okay?

RIDER Yeah, yeah okay.

...

UBER That's okay. That's completely understandable, no issues at all. So I just had some questions regarding this incident, just to give insight, just to complete our report. So we have, as I mentioned received a report of non consensual kissing on a recent trip. So you did say that you booked that for your friend. Could I just confirm the date and time of that incident please?

RIDER Yes, let me just get it.

UBER No worries.

RIDER It was booked at around 1:20 or something like that 1 ...

UBER And do you remember the date in particular?

RIDER And the date, I'm just double checking, 23rd of May.

UBER Thank you very much. And just, from your knowledge, is it okay if you can kind of just recount this incident from start to finish to the best of your ability?

RIDER Yeah. So I booked the Uber for her because it was very late. I sat her in the back left of the car. And I watched, you know, how on the Uber app you can track where the car is going like yes on it. So I just tracked it all the way to her house. I called her just as she was pulling in. And she said everything was okay. And then ... and then I thought she ... okay she'll be fine as long as she got home safe. But then I think 30 minutes later, she texted me and told me that the guy had kissed her. And she also tried to call me, but yeah.

...

UBER And is there any other information you wish to share with me while I do have you on the phone today?

RIDER I think that's all the ... those are like as much as I know about the incident itself.

UBER That's okay.

RIDER Well, I can just, all else I can tell you is that he just hugged and kissed her and she was also like, yeah, well she didn't want to be hugged and kissed obviously.

UBER Of course. And are you aware of any additional comments that he made towards her?

RIDER Not sure, but I know he made a new Instagram account to follow her because she got a follow request from a brand new account. He was just following her

UBER Okay, well thank you so much for letting me know. Is that about all today?

RIDER Yes, it should be it.”

(reproduced verbatim)

[18] At 12.09pm on 27 May 2025, a member of Uber’s Community Operations Team placed a call to Mr Al Hussein. Uber’s written record of that conversation includes the following:¹⁷

UBER Okay, thank you for confirming. So as I have mentioned, we are calling in regards to some concerning feedback that we have received, where a rider has reported from a recent trip that you may have made unwanted sexual contact. Do you know why we have received feedback like this?

DRIVER Sorry, [redacted by Uber] that did you say? Unwanted what?

UBER That’s okay. So a rider has reported that you may have made unwanted sexual. Contact. Do you know why we would have received feedback like this?

DRIVER No, no, no, no, not at all. Because like [redacted by Uber] I’m not sure if you can see it from your end. I’ve been this is not like I’m. I’m new to Uber or something. I’ve been doing this for the past nine years. I mentioned to you through the email as well. I would never, ever do such a thing, you know.

UBER That’s okay, thank you so much for mentioning that with me.

DRIVER Yeah, like you can look at my profile. If there’s anything being done before, like similar nothing at all, I’m sure you can tell. And this is something quite big. Like, why would I do such a thing?

UBER Well, thank you for sharing that once more. I just want to reassure you that any information that you do share with me during our call today, that’s absolutely something that I can document on your behalf. So my role today is just to follow up on the feedback that we have received, just to get your perspective on this matter, because I do know that there are two sides to every story, which is why I just wanted to gather your opinion.

DRIVER Yes.

UBER Is it okay, if you could just bear with me if you could recall any previous trips that have been similar in nature or maybe haven’t gone the way you’ve expected.

DRIVER Yeah. Yeah, you're more than welcome to do that from your end. So just to see that I'm actually being honest with you.

UBER So just to say like, just in terms of your recollection and your memory, is there any previous trips that didn't go as expected or any trips that were unusual in particular?

DRIVER Like you mean overall?

UBER Just anything that you can recall that stands out to you.

DRIVER Because I've kept this account for the past like, you know, nine years and I've done, it in Perth as well and I moved to Sydney and I've continued my Uber app through Sydney as. I'm not sure if you if you can tell from that as well, but I haven't really actually recalled something that serious to be honest with you. I've had like as I mentioned to you, 9 years is quite a while so, I have dealt with, you know, intoxicated people, drunk people. And for me, for my role most of the time I do like the night shift. So I generally start my shift at 5-6 pm, all the way through the night until like 2-3 am. So as you can imagine, [redacted by Uber] I go through a lot of people that are, you know, had a bit too much to drink and stuff. But to be honest with you, nothing that serious to the point where I'd actually do such a thing.

UBER That's telling

DRIVER You know, I lose my job and yeah, because I do this full time. I'm not sure if you can. Tell as well and I've got 3 kids to return back home to. So it's not something that I would do, to be honest with you at all. Like, I'm quite surprised that this is actually happening and you're calling and I've got my account put on hold for that long. I thought it was something like, you know, something live or something. You know, I might be tired on the road, for instance, like something that, you know, I would fix upon, but, for such a conduct, no way I would ever do that. Yeah."

(reproduced verbatim)

[19] Minutes after this conversation ended, Uber sent a message to Mr Al Hussein informing him that his access to "the app" would remain restricted while Uber reviewed the information it had gathered.¹⁸

[20] Later on 27 May 2025, and again on 28 and 29 May 2025, Mr Al Hussein sent messages to Uber seeking updates on the status of his account.

[21] On 2 June 2025, Uber sent Mr Al Hussein a message containing a preliminary deactivation notice. The preliminary deactivation notice stated in part:¹⁹

"Preliminary deactivation notice: Your account is at risk of deactivation

Hi, Ali.

This is [redacted by Uber] 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 assault/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:

1. **27/05/2025:** Notified you of a report that you may have had made unwanted sexual contact that occurred on a trip on 23/05/2025.
2. **01/01/2019:** Notified you of a report that you may have made sexually suggestive remarks that occurred on a trip on 26/12/2018.

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 extremely concerning and are in violation of our Uber [Community Guidelines](#), before a final decision is made, we are providing you with the opportunity to respond to this preliminary deactivation notice. ...

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.

...

[Click here to respond to this notice](#)

[Click here to request a discussion ...](#)”

(reproduced verbatim)

[22] In the evening of 2 June 2025, Mr Al Hussein requested a discussion, as the preliminary deactivation notice suggested he could. He did so twice more on 4 June 2025.

[23] On 5 June 2025, Mr Al Hussein received a message from Uber which stated:²⁰

“Thanks for getting in touch, Ali.

We have directed this matter to the most appropriate support team, who will be reaching out to you as soon as possible. In the meantime, if you feel more information could be helpful, please reply to this message.”

[24] Mr Al Hussein was not contacted by anyone at Uber to have the discussion he requested.

[25] In the meantime, on 3 June 2025 Mr Al Hussein sent a message to Uber in response to the preliminary deactivation notice, in these terms:²¹

“I hope this letter finds you well. I am writing to provide relevant information about my suspended Uber account which has occurred on 02/06/2025.

Firstly, I want to emphasize that, as a dedicated Uber driver, I have always prioritized the safety and satisfaction of my riders. My commitment to providing excellent service is evident through my consistently high ratings.

I have completed over 20,000 trips throughout 9 years of driving Uber in two different cities in Australia (Perth From 2016 & Sydney from 2018).

As you can imagine being on the platform for that long driving almost every day for the past 9 years, at times, things don't go as smooth or as planned. This can happen and people might interpret things in a different way or misunderstand. Which leads to reports being sent.

Being an evening driver and working throughout the night until early morning hours, I have experienced a lot. This is the timeframe where people get drunk especially over the weekends. I pick them up after late hours and I make sure they reach home safely. During the trip, I am primarily focus on the road to make sure my safety and the riders are met. Because I feel that this is a trust and I have to always be professional at all times. At times, remarks or particular comments can easily be misinterpreted and I have learnt that not to engage when not necessary is best to keep my Uber account so that I won't have any issues with my riders moving forward. Also, I'll be adding a camera recording in my car to protect the safety of myself and the riders.

I trust Uber and its Representatives, as a well-established and reputable company, will demonstrate its commitment to fairness, justice, and providing opportunities for appeal/review for drivers like myself. As my account remains restricted while relying on Uber full time, it is causing undesirable financial hardship for me and my family (father of three young children).

It is my ardent hope that this appeal receives immediate attention and that the restriction on my account will be reviewed promptly. Thus, allowing me to provide reliable transportation services to Uber's valued riders once again. I am eagerly awaiting your prompt response and resolution of this matter. Thank you for your attention to address my concern.”

[26] On 10 June 2025, Uber sent Mr Al Hussein a final deactivation notice, which stated in part:²²

“Hello Ali,

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.

...

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

Threshold matters

[27] Before considering the merits of Mr Al Hussein’s application, I am required to decide three matters:²³

- (1) whether the application was made within the statutory time period;²⁴
- (2) whether Mr Al Hussein was a person protected from unfair deactivation;²⁵ and
- (3) whether the deactivation was consistent with the Code.

[28] There was no controversy about the first two matters. I am satisfied on the evidence of both of them.

[29] There was, however, a significant dispute between the parties regarding whether the Code applied in the circumstances of this case and, if so, whether Uber had complied with it. As I summarised above, Uber contended that Mr Al Hussein was deactivated because he engaged in serious misconduct. The process for deactivation under the Code does not apply to the deactivation of an employee-like worker for serious misconduct.²⁶ In the alternative, Uber contended that if the Code applied, it had complied with it. Mr Al Hussein disputed those contentions.

[30] For the reasons which follow, I have determined that the Code applied and that the deactivation was not consistent with the Code.

Mr Al Hussein did not engage in serious misconduct

[31] The term “serious misconduct” is defined for the purposes of the Act as having its “ordinary meaning”.²⁷ In the case of employee-like workers, serious misconduct includes:²⁸

- (1) wilful or deliberate behaviour that is inconsistent with the employee-like worker continuing to perform work under, or continuing to have access to, the relevant digital labour platform;
- (2) conduct that causes serious and imminent risk to the health or safety of a person or the reputation, viability or profitability of the digital labour platform operator; or

- (3) engaging in sexual harassment in the course of performing that work or in relation to accessing that digital labour platform.

Uber's submissions

[32] Uber relied on all of the 2016, 2018, 2019 and 2025 Reports as demonstrating that Mr Al Hussein had engaged in serious misconduct. It submitted:²⁹

17. The Respondent says that the Applicant engaged in 'serious misconduct'. 'Serious misconduct' is defined in the *Fair Work Regulations 2009* and has its ordinary meaning. It includes:

- (a) Wilful or deliberate behaviour that is inconsistent with the employee-like worker's continued access to that digital labour platform;
- (b) Conduct that causes serious and imminent risk to:
 - (i) the health or safety of a person; or
 - (ii) the reputation, viability or profitability of the digital labour platform operator;
- (c) Engaging in sexual harassment where sexual harassment is unwelcome conduct of a sexual nature in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

18. The Respondent submits the conduct of the Applicant which was the subject of the Rider Complaints amounted to serious misconduct in that:

- (a) it was wilful and deliberate. The Applicant did this on four separate occasions indicating a pattern of behaviour, and intentional conduct, rather than just a singular instance that could be dismissed or the subject of a warning. That the Rider Complaints related to similar behaviour further supported the view taken by the Respondent that the Rider Complaints, in particular Complaint 4, were substantiated;
- (b) it caused serious and imminent risk to the health or safety of the Riders who made the complaints. The Rider who made Complaint 1 reported feeling 'unsafe' and that the experience was 'scary'. The Riders who made Complaints 2 and 3 reported feeling 'uncomfortable'. The Account Holder who made Complaint 4 reported the incident to Police;
- (c) the experience of the Riders as a result of the conduct of the Applicant has the potential to damage the reputation of the Respondent if the perception is that Riders will not be safe when using the Uber Driver Platform;

(d) the conduct engaged in by the Applicant was of a sexual nature in that it included personal questions in the case of Complaint 1, and flirting with the Riders in the case of Complaint 2 and 3, and trying to kiss and hug the Riders in the case of Complaints 3 and 4. Given the circumstances of the trip subject to the Rider Complaints, a reasonable person would anticipate that the Riders would feel unsafe and therefore intimidated.

19. The Rider involved in each of the Rider Complaints reported was affected by the conduct such that they initiated a complaint with the Respondent. The reports were validated by the Respondent in conversation with the Rider who experienced the conduct complained of in each of, and had made, the Rider Complaints. In particular, a representative of the Respondent made a telephone call and spoke with the Rider who made Complaints 3 and the Account Holder who made Complaint 4. The Respondent also confirmed that the Riders were not the subject of any record of the Respondent that indicated a history of fraudulent complaints.

20. The Uber Driver Platform provides options for Riders to make complaints. This is an important part of protecting the health and safety of Riders as well as supporting the reputation of the Uber Driver Platform. The Respondent takes measures to verify complaints including speaking with the complainant where relevant or possible. This ensures the validity of complaints. The Respondent may take action based on the complaints but does not request that any complainant provide statements or be available to give evidence as to their complaint. In this regard the Respondent protects the privacy of its users (including Riders), a matter which is reflected in section 17 of the Code. Section 13(9) of the Code also recognises that deactivation of an employee-like worker on the basis of a complaint about that worker is a deactivation for a valid reason if the worker does not respond or provides an inadequate response. This is also important to the reputation of the Respondent in that Riders should have the ability to make reports about conduct on the part of Drivers which threatened their safety and expect that the Respondent will take action to avoid the conduct being repeated without the Rider being required to make a statement or give evidence.

21. The Applicant signed the Services Agreement when he commenced providing services on the Uber Driver Platform. It is a requirement of the Services Agreement that the Applicant comply with the Community Guidelines. ...” (footnotes omitted)

[33] Uber made the following oral submissions at the hearing:³⁰

“The respondent submits that when assessing if the applicant engaged in serious misconduct, the Commission should consider whether the respondent had a reasonable belief that the conduct of the applicant was serious enough to warrant serious misconduct and subsequently deactivation. We say that it’s not necessary for the Commission to determine whether the respondent was correct in the belief that it held, just that it had a reasonable basis for determining or believing that the conduct likely occurred.”

[34] Those oral submissions were premised on the terms of section 14(4) of the Code,³¹ which provides:

14 Outcome of digital labour platform operator’s consideration and inquiries

...

Decision to terminate access

(4) The digital labour platform operator may terminate the employee-like worker’s access to the digital labour platform only if:

(a) the reason for the termination is a valid reason; and

(b) the operator considers on reasonable grounds that the reason has been established.

[35] Uber drew my attention to the following observations of Deputy President Saunders in *Rahul Kumar v Portier Pacific Pty Ltd*:³²

“[8] In light of this, the requirement in paragraph 14(4)(a) of the Code – that the reason is a valid reason – should be understood as a test of the quality of the reason. That is, whether the reason is valid in the sense of being ‘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. This is a question of characterisation, not proof. The Commission’s role under the Code is to evaluate whether the reason being relied on by the operator for deactivation meets this standard of being a ‘valid reason’, rather than to determine whether the alleged conduct occurred.” (footnotes omitted)

Relevant principles

[36] The immediate difficulty for Uber is that it sought to rely on a standard arising from the terms of the Code, while at the same time contending that the Code had no application. I recognise the concerns identified in paragraph 20 of the extract from Uber’s submissions reproduced above, and in particular the references to sections 13(9) and 17 of the Code. But those sections operate within the context of the process mandated by the Code.

[37] In *Mohammad Shareef Hotak v Rasier Pacific Pty Ltd*³³ (“*Hotak*”) the Full Bench had to determine whether there was a valid reason for the deactivation of the applicant in that case, having found that the deactivation was not consistent with the Code. It made the following observations:

[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.”

(footnotes omitted)

[38] The reference in *Hotak* to “*Briginshaw*” is to the well-known case of *Briginshaw v Briginshaw*³⁴ and in particular to the following observations of Dixon J (as he then was):³⁵

“The truth is that, when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence before it can be found. It cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief in its reality. No doubt an opinion that a state of facts exists may be held according to indefinite gradations of certainty; and this has led to attempts to define exactly the certainty required by the law for various purposes. Fortunately, however, at common law no third standard of persuasion was definitely developed. Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is

not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, *or the gravity of the consequences flowing from a particular finding* are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. *In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.*" (my emphasis)

Assessment of Uber's evidence and submissions

[39] Considering the case that Uber advanced, in the context of *Hotak* and *Briginshaw*, a number of observations can be made.

[40] First, Uber's case rests on conclusions that Ms Fairlie has drawn from documents in Uber's records. She stated:³⁶

"I have reviewed Uber's internal system to understand the process taken by the team member in Uber's Community Operations team who assessed whether to proceed with the deactivation of the Applicant's account. Based on my review, I can see the following occurred: ..."

[41] Ms Fairlie went on to describe what another unidentified person (or other unidentified persons) "considered", "found", "understood" or "decided" in the process culminating in the deactivation. Her statement purports to explain the reasoning process that an unidentified person went through that resulted in their decision to deactivate Mr Al Hussein. Ms Fairlie does not appear to have been involved in that process herself. Leaving aside whether all of the relevant documents from "Uber's internal system" are before me, it is simply not enough for Uber to rely on such third party conjecture to support an allegation of serious misconduct. I have given Ms Fairlie's evidence in this regard limited weight.

[42] Second, and similarly, Uber effectively asked me to accept that the record of the conversation between a member of Uber's Community Operations Team and the Account Holder on 27 May 2025 both accurately reflected the conversation, but was also truth of the facts referred to in it. That record, however, is said to reflect a conversation between an unidentified Uber representative and the unidentified Account Holder about what the unidentified rider told the Account Holder had occurred. There is nothing from the rider themselves.

[43] That record of conversation is an insufficient basis on which to find that the alleged conduct occurred. At the very least, I would have expected that Uber would lead evidence from the Uber representative verifying that the conversation occurred and that the record was an accurate record of what was discussed.

[44] Third, Uber placed weight on the fact that the circumstances of the 2025 Report were reported to the NSW Police. It argued that this lent credence to the rider's complaint regarding Mr Al Hussein's conduct. However, there is no evidence as to what was reported to the NSW Police and by whom. (There is no evidence to support Uber's submission that the Account Holder reported the matter to the NSW Police.)

[45] Fourth, Uber also relied on its “Voyager Data” which Ms Fairlie said “demonstrated the Applicant was at the drop-off location for the trip subject to Complaint 4 for 21 minutes after the trip was completed”.³⁷ This was said to support the Account Holder’s statement to Uber that something happened in the time between Mr Al Hussein entering the rider’s driveway and the rider calling the Account Holder approximately 30 minutes later. However, in his oral evidence at the hearing, Mr Al Hussein stated that he remained in the vicinity in the hope of securing another job. There is nothing unnecessarily incredible about that explanation. It was apparently not one considered by Uber; there is no evidence that it gave Mr Al Hussein a chance to explain the Voyager Data, or to respond to the conclusion that Uber had drawn from it, prior to the deactivation.

[46] Fifth, it was not entirely clear from Uber’s evidence and submissions what use it sought to make of the 2016 Report, the 2018 Report and the 2019 Report. Two readings were possible. First, they were to be accumulated with the 2025 Report as comprising the grounds for deactivation. Second, and alternatively, they provided context in which the seriousness of the 2025 Report ought to be viewed.

[47] To the extent that Uber suggested that the outcome of the 2019 Report lends credibility to the 2025 Report, I am not prepared to draw such a conclusion in the absence of more probative evidence as to the circumstances of the latter.

[48] To the extent that Uber relied on the 2016 Report, the 2018 Report and the 2019 Report to establish that Mr Al Hussein engaged in serious misconduct (rather than providing context to the 2025 Report), I observe:

- (1) Uber elected to deal with the 2019 Report by issuing Mr Al Hussein with a message on 19 January 2019 informing him that “if any future complaints of inappropriate behaviour come through, establishing a pattern of behaviour, we will have to review your access to the app”. This was essentially a warning. There seems no basis on which Uber could claim to revisit the outcome of the 2019 Report in 2025.
- (2) In her evidence Ms Fairlie described each of the 2016 Report and 2018 Report as “sexually inappropriate behaviour”. On the face of each report, it is a stretch to regard either of them as necessarily involving “sexual behaviour”. There is nothing in the 2016 Report to suggest sexual behaviour. The 2018 Report is equivocal in this regard, with the rider themselves stating that they “could be mistaken” but “felt” that Mr Hussein was “trying to hit on” them.

[49] I emphasise that I make no findings that the reports did not reflect the riders’ concerns, that those concerns were not legitimate or that Uber should not have taken them seriously. I am considering them, though, in the context of the use Uber sought to make of them and its characterisation of them.

[50] Sixth, and further in this regard, there is nothing in the documentary evidence up to and including the final deactivation notice that Uber had regard to the 2016 Report or the 2018 Report when it made its decision to deactivate Mr Al Hussein. Ms Fairlie gave evidence that a “member of Uber’s Community Operations team” considered the 2016 Report, the 2018 Report and the 2019 Report before Uber issued the preliminary deactivation notice,³⁸ and that they

were among the “findings” of a “Community Operations representative” resulting in that person’s decision to deactivate Mr Al Hussein.³⁹ However, for the reasons stated above, I have given this evidence little weight.

[51] Significantly, the final deactivation notice referred only to “the reasons outlined in the preliminary deactivation notice”. The preliminary deactivation notice made no mention of the 2016 Report or the 2018 Report.

[52] Seventh, and even assuming that the decision to deactivate was taken having regard to those reports, there is no evidence to support Uber’s submission that “[t]he reports were validated by [Uber] in conversation with the Rider who experienced the conduct complained of”,⁴⁰ to the extent that the submission encompassed the 2016 Report and 2018 Report.

[53] Eighth, and further in this regard, Uber led no evidence that it had sought Mr Al Hussein’s response to the 2016 Report or the 2018 Report. It was put to Mr Al Hussein in cross-examination that he had received a “warning” or a “notice” in respect of them, and he appeared to accept that.⁴¹ It was not clear whether the communication was a warning or a notice, or whether Uber drew a distinction between those terms. In any event, there is no evidence of those communications in evidence. Significantly, while Ms Fairlie gave evidence that Mr Al Hussein had received a warning in relation to the 2019 Report, she made no such assertion in respect of the 2016 Report or 2018 Report. It follows that to the extent that Uber “validated” the 2016 Report and 2018 Report, it appears to have done so in the absence of any response from Mr Al Hussein.

Conclusion

[54] For the reasons set out above, I find that Uber has not discharged its evidentiary onus of proving that Mr Al Hussein engaged in the conduct alleged in respect of the 2025 Report. Its evidence can be characterised as being “inexact proofs, indefinite testimony, or indirect inferences” of the kind to which Dixon J in *Briginshaw* referred.

[55] It follows that I find that Uber has not demonstrated that Mr Al Hussein engaged in serious misconduct. It follows that the Code applied to his deactivation.

The deactivation was not consistent with the Code

[56] If the deactivation of an employee-like worker was consistent with the Code, the worker will not have been unfairly deactivated.⁴² 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.⁴³

[57] Section 13 of the Code is relevantly in these terms:

13 Steps after preliminary deactivation notice is given

Worker’s response to preliminary deactivation notice

(1) An employee-like worker may respond to a preliminary deactivation notice given to the worker by a digital labour platform operator.

(2) The response must be given within the period specified in the preliminary deactivation notice, or within such longer period as is agreed between the operator and the worker.

(3) The response may be in writing or may be given orally (including as part of the discussion mentioned below).

Discussion with operator's representative

(4) The employee-like worker may, within the period mentioned in paragraph 11(1)(c), request the digital labour platform operator to make a representative of the operator available to discuss the preliminary deactivation notice.

(5) If an employee-like worker makes such a request, the digital labour platform operator must make a representative available for the discussion within a reasonable time.

[58] Uber submitted:⁴⁴

“As the Applicant did not request a discussion with a representative of the Respondent, sections 13(4) to (6) of the Code do not apply.”

[59] That submission is wrong. Mr Al Hussein made three requests for a discussion, as the preliminary deactivation notice invited him to do. Despite Uber representing to him that the “appropriate support team” would be “reaching out” to him, that did not occur. Ms Fairlie acknowledged that in her oral evidence. She stated that it was “purely a systems error where [Mr Al Hussein’s] request for discussion did not feed through to the relevant agents who make those calls”.⁴⁵

[60] Irrespective of the reason, Uber did not make a representative available for the discussion that Mr Al Hussein requested. This was contrary to the mandatory terms of section 13(5) of the Code.

[61] It follows that Mr Al Hussein’s deactivation from the Uber Driver Platform was not consistent with the Code.

The merits of the application

[62] Having made that finding, it is necessary to turn to the merits of the application. That is, whether Mr Al Hussein’s deactivation was unfair.

[63] In considering whether a person’s deactivation was unfair, the Commission must take into account.⁴⁶

- (1) whether there was a valid reason for the deactivation related to the person's capacity or conduct; and
- (2) whether any relevant processes specified in the Code were followed; and
- (3) any other matters the Commission considers relevant.

No valid reason for deactivation

[64] In considering whether there was a valid reason for the deactivation, I am guided by the passages from *Hotak* reproduced at [37] above.

[65] I have found that Uber failed to demonstrate that Mr Al Hussein had engaged in serious misconduct. It follows that section 536LH(2) cannot apply to preclude a finding that the deactivation was unfair.

[66] I have also found that Uber failed to discharge its onus to demonstrate that Mr Al Hussein engaged in the conduct alleged against him in the 2025 Report. He denied having done so.

[67] To the extent that Uber relied on the 2016 Report, the 2018 Report and the 2019 Report to establish that Mr Al Hussein engaged in serious misconduct (rather than simply providing context to the 2025 Report), I repeat the observations at [48] above. In particular, the 2016 Report and the 2018 Report do not on their face – separately or together – provide a sound, defensible or well founded reason for deactivation. They are not of sufficient gravity or seriousness to justify deactivation. Further, I fail to see how Uber could rely on those reports to warrant deactivation in 2025, having apparently taken no action in respect of them at the time they were made.

[68] I find that that there was not a valid reason for Mr Al Hussein's deactivation.

Compliance with Code processes

[69] I have determined above that Uber failed to comply with section 13(5) of the Code.

Other relevant matters

[70] There are four other matters that I consider to be relevant in determining whether the deactivation was unfair.

[71] First, the allegations stemming from the 2025 Report were put to Mr Al Hussein in the vaguest of terms and not in a form that would allow him to properly respond to them. In the conversation between the Uber representative and the Account Holder on 27 May 2025, it was alleged that Mr Al Hussein had "hugged and kissed" the rider. But that is not what was conveyed to Mr Al Hussein. In the conversation that the Uber representative had with Mr Al Hussein only minutes after the Account Holder had been spoken to, Mr Al Hussein was told that there had been a report that he may have made "unwanted sexual contact" with a rider.

Even allowing for the possibility of that term having a broad construction, it would have been fairer for the allegation of “hugging and kissing” to have been put squarely to him.

[72] The potential for unfairness was compounded by the obliqueness of the Uber representative’s requests of Mr Al Hussein for information, such as:

“Do you know why we would have received feedback like this?”

“Is it okay, if you could just bear with me if you could recall any previous trips that have been similar in nature or maybe haven’t gone the way you’ve expected.”

“So just to say like, just in terms of your recollection and your memory, is there any previous trips that didn’t go as expected or any trips that were unusual in particular?”

[73] Further in this regard, the preliminary deactivation notice referred to Mr Al Hussein having “previously been reported for multiple instances of sexual assault/sexual misconduct”. The instances cited are the 2025 Report, in which Mr Al Hussein is alleged to have kissed and hugged the rider, and the 2019 Report, which alleged that Mr Al Hussein was flirty, asked the rider for a kiss and a hug and hugged her. I accept that such conduct, if proven, may be sexual misconduct. But to juxtapose it with “sexual assault” might reasonably cause someone in Mr Al Hussein’s position to question what he was being accused of.

[74] This is particularly the case given the terms of the Community Guidelines. I have reproduced above extracts from the Community Guidelines, but I highlight the following passages:

“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.”

[75] Again, I am not suggesting that flirting, requests for kisses or hugs, or kissing and hugging a person may not be sexual conduct. Much less am I suggesting that non-consensual behaviour of that kind would not cause offence, concern or alarm to the recipient of the conduct. It would be entirely unacceptable, and may well warrant a person’s deactivation.

[76] My point goes only to the fairness of the process. Given the examples of sexual conduct provided by the Community Guidelines, what would a person in Mr Al Hussein’s position have understood by allegations that he had engaged in “unwanted sexual contact” or “sexual assault/sexual misconduct”? The potential breadth of the terms adopted in the Community Guidelines and in Uber’s communications with Mr Al Hussein called for the allegations to be put to him squarely. They were not.

[77] Under cross-examination, Mr Al Hussein had the following exchange with Uber's representative, which captures his concerns with the process:⁴⁷

You accept that you did provide a written response to the preliminary deactivation notice?---Yes. However, with saying that, I wasn't provided with sufficient details to be able to defend myself and to tell you the exact allegations from my end. All I received is, 'We have temporarily blocked your account to be able to investigate a recent trip.' I wasn't given any other information. I wasn't given any trip time, customer name, date, the actual allegations. It was only after me submitting an application to the Fair Work Commission I get to see all these details of the phone calls, like, you know, specific details. I was actually surprised, and I even said that in writing to the Commission, that we don't get these details up until right now after me submitting a case with the Fair Work.

But you do accept that on 3 June, you provided a written response to the preliminary deactivation notice?---Yes, Ms Leeds, but with saying that also, I'm not sure – I'm sure you've got a copy of it.

I'm just asking ---?---Yeah, and I'm answering you. I'm telling you that the information that I gave is nice and general. It wasn't anything specific to the allegations. That's what I'm trying to come across. You know, what's the point of me writing back to you guys when I don't have any clue of what's going on?"

[78] I accept that the concerns voiced by Mr Al Hussein in that testimony were well-founded.

[79] Second, there is very little evidence that Mr Al Hussein was aware of the 2016 Report and the 2018 Report prior to Uber filing its evidence in these proceedings. There is absolutely no evidence that he was aware that Uber was relying on those reports to support his deactivation or that he was given a chance to be heard in that regard.

[80] Third, and similarly, Mr Al Hussein was not made aware that Uber was relying on the Voyager Date or given an opportunity to respond to the conclusions that Uber apparently drew from it.

[81] Fourth, Mr Al Hussein had performed work through the Uber Driver App for nearly nine years. He gave evidence that he had completed more than 20,000 trips. Apart from the 2016 Report, the 2018 Report and the 2019 Report (the significance of which in each case must be considered in light of my comments above), there was no suggestion that his performance or conduct had been called into question prior to his deactivation. Mr Al Hussein stated that his deactivation had caused him to lose \$1,991.18 per week, being his average weekly earnings prior to his deactivation.

Conclusion

[82] Mr Al Hussein's deactivation on 10 June 2025 was unfair. Uber failed to comply with the processes specified in the Code, and the evidence before me does not support the serious allegations made against him. There was no valid reason for the deactivation. The process by

which Uber substantiated the allegations arising from the 2025 Report and ultimately decided to deactivate Mr Al Hussein lacked transparency and fairness.

Remedy

[83] Mr Al Hussein seeks reactivation. The Commission may order a person's reactivation if:⁴⁸

- (1) the person has made an application under section 536LU;
- (2) the Commission is satisfied that the person was protected from unfair deactivation at the time of being deactivated; and
- (3) the Commission is satisfied that the person has been unfairly deactivated.

[84] Given my earlier findings, all of these preconditions are met in this case.

[85] Section 536LQ relevantly provides as follows:

536LQ Remedy—reactivation etc.

Reactivation

(1) An order for a person's reactivation must be an order that the digital labour platform operator who operated the digital labour platform at the time of the deactivation take measures to restore the person to the position they would have been in but for the deactivation, including as follows:

...

(b) if the person's access to the digital labour platform was terminated—by reinstating the person's access to the digital labour platform;

...

Order to restore lost pay

(3) If the FWC makes an order under subsection (1) and considers it appropriate to do so, the FWC may also make any order that the FWC considers appropriate to cause the digital labour platform operator or the associated entity to pay to the person an amount for the remuneration lost, or likely to have been lost, by the person because of the deactivation.

(4) In determining an amount for the purposes of an order under subsection (3), the FWC must take into account:

(a) 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

(b) 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.

[86] In all of the circumstances of this case, I am satisfied that it is appropriate that I exercise my discretion to order Mr Al Hussein’s reactivation. To ensure that his access to the Uber Driver App is restored on terms to place him in the position he would have been in but for the deactivation, the orders will be in these terms:

1. Pursuant to section 536LP(1) of the *Fair Work Act 2009* (“Act”), the Fair Work Commission orders that Raiser Pacific Pty Ltd (“Uber”) must reinstate Anwar Kareem Al Hussein’s access to the digital labour platform that Uber operates on the basis that:

(a) for the purposes of section 536LD(c) of the Act, Mr Al Hussein is deemed to have performed work through or by means of Uber’s digital labour platform on a regular basis during the period from 25 May 2025 to the date on which his access to the digital labour platform is reinstated; and

(b) Uber offers to Mr Al Hussein that he be engaged on the same terms and conditions as those on which he was engaged by Uber immediately before his deactivation on 10 June 2025.

2. Uber must comply with Order 1 by no later than 31 October 2025.

[87] The requirement in paragraph 1(a) above is necessary to restore Mr Al Hussein to the position he would have occupied but for his deactivation on 10 June 2025. At that time, he was protected from unfair deactivation under section 536LD, as he met the statutory criteria: he was an employee-like worker, had performed work through Uber’s digital labour platform, and had done so on a regular basis for at least six months. Absent the inclusion of this requirement in my reactivation order, Uber could deactivate Mr Al Hussein shortly after he was reactivated in accordance with my order, at a time when he would not yet have reacquired the statutory protection under section 536LD. Such an outcome would undermine the remedial purpose of the order and the protections afforded by the Act.⁴⁹

[88] I also consider it appropriate to make an order to require Uber to pay Mr Al Hussein an amount for the remuneration he has lost because of the deactivation.

[89] In *Hotak* the Full Bench observed:

“[131] The purpose of an order to restore lost pay under s 536LQ(3)-(4) of the Act is to place an employee-like worker in the financial position they would have occupied had they not been unfairly deactivated. This will generally involve the following steps:

(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’.”

[90] Consistent with that methodology, and with the way in which the Full Bench in *Hotak* applied it,⁵⁰ I find as follows:

- (1) An average of Mr Al Hussein’s weekly earnings from Uber in the period leading up to 25 May 2025 – the date on which Uber placed his account “on hold” – will provide a proper basis to calculate the earnings he would likely have received had he continued to work on the Uber Driver App in the period between 10 June 2025 and the date on which his account is reactivated. I observe that after 25 May 2025 Mr Al Hussein performed no work on the Uber Driver App. His average earnings ought not be reduced as a consequence.
- (2) There are no earnings to deduct in Mr Al Hussein’s case. He gave evidence under cross-examination that he had not performed any paid work since his deactivation to the time of the hearing, and was reliant on Centrelink benefits.⁵¹

- (3) Had Mr Al Hussein continued working on the Uber Driver App during the period between his deactivation and his reactivation, he would have incurred expenses in running his car (such fuel expenses), paying fees to Uber⁵² and “road, bridge, tunnel and airport usage charges imposed by a toll operator, airport operator or government authority”.⁵³

[91] I am not able on the evidence to quantify the payment that I should order Uber to make to Mr Al Hussein. The appropriate course is to direct the parties to confer with a view to reaching agreement on the quantum of an order to restore lost pay for Mr Al Hussein, on the basis that the methodology set out in [89]-[90] above is used to calculate the quantum.

[92] After the parties have had that opportunity to confer, I will make an order under section 536LQ(3). Such an order will not constitute the payment of compensation to Mr Al Hussein.⁵⁴

Conclusion

[93] Mr Al Hussein was protected from unfair deactivation at the time he filed his unfair deactivation in the Commission on 25 June 2025. He has been deactivated from Uber’s digital labour platform. That deactivation was unfair. I consider that it is appropriate to exercise my discretion to make an order for Mr Al Hussein’s reactivation, together with an order to restore lost pay.

[94] The order for Mr Al Hussein’s reactivation, in the terms set out above, is issued concurrently with this decision in [PR792947](#).

[95] An order to restore lost pay will be made after the parties have been given an opportunity to confer in relation to the quantum of the order.

[96] To that end, I make the following directions:

- (1) The parties are to confer with a view to reaching agreement on the quantum of an order to restore lost pay for Mr Al Hussein, using the methodology set out at [89]-[90] above to calculate the quantum.
- (2) Uber is to inform me, by email to my Chambers, of the outcome or status of the parties’ discussions (as the case may be) by no later than 4.00pm on 7 November 2025.



COMMISSIONER

Appearances:

Mr A Al Hussein, appeared for himself.

Ms J Leeds, on behalf of the Respondent

Hearing details:

29 August 2025

Sydney (using Microsoft Teams)

Final written submissions:

25 August 2025

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¹ In this decision, unless otherwise stated, all references to legislation are to provisions of the Act

² Section 7(2) of the Code

³ Section 536LH(2)

⁴ Having regard to section 536LF(c)

⁵ The Services Agreement is Exhibit A to Mr Al Hussein's submissions and Annexure A to the Statement of Emilee Fairlie dated 22 August 2025

⁶ Clause 5.1(f)

⁷ Clause 5.1(f)

⁸ Clause 15.2(b)(i)

⁹ The Community Guidelines are Exhibit B to Mr Al Hussein's submissions and Annexure B to the Statement of Emilee Fairlie

¹⁰ Statement of Emilee Fairlie, Annexure E

¹¹ Statement of Emilee Fairlie, Annexure F

¹² Statement of Emilee Fairlie, Annexure G

¹³ Statement of Emilee Fairlie, Annexure J

¹⁴ Statement of Emilee Fairlie, paragraph 21

- ¹⁵ Statement of Emilee Fairlie, Annexure N
- ¹⁶ Statement of Emilee Fairlie, Annexure K
- ¹⁷ Statement of Emilee Fairlie, Annexure O
- ¹⁸ Statement of Emilee Fairlie, Annexure P
- ¹⁹ Statement of Emilee Fairlie, Annexure R
- ²⁰ Applicant's Response to Respondent's Submissions, Annexure A
- ²¹ Statement of Emilee Fairlie, Annexure S
- ²² Statement of Emilee Fairlie, Annexure T
- ²³ Section 536LW
- ²⁴ As prescribed by section 536LU(3)
- ²⁵ Within the meaning of section 536LD
- ²⁶ Section 7(2) of the Code
- ²⁷ Section 12 and regulation 1.07(1) of the *Fair Work Regulations 2009*
- ²⁸ Regulation 1.07(4) of the *Fair Work Regulations 2009*
- ²⁹ Respondent's Outline of Submissions
- ³⁰ Transcript PN278
- ³¹ See Transcript PN320 and PN323
- ³² [\[2025\] FWC 2275](#) at [8]. See Respondent's Outline of Submissions at paragraph 40(b).
- ³³ [\[2025\] FWCFB 214](#)
- ³⁴ (1936) 60 CLR 336
- ³⁵ (1936) 60 CLR 336 at 361-362
- ³⁶ Statement of Emilee Fairlie, paragraph 34
- ³⁷ Statement of Emilee Fairlie, paragraph 34(a)(iii)
- ³⁸ Statement of Emilee Fairlie, paragraph 34(a)(iv)
- ³⁹ Statement of Emilee Fairlie, paragraph 34(e)(v)
- ⁴⁰ Respondent's Outline of Submissions at paragraph 19, reproduced above
- ⁴¹ Transcript PN124-PN128
- ⁴² Section 536LF(c)
- ⁴³ Section 536LJ(3)
- ⁴⁴ Respondent's Outline of Submissions, paragraph 36
- ⁴⁵ Transcript PN203
- ⁴⁶ Section 536LH(1)
- ⁴⁷ Transcript PN113-PN115
- ⁴⁸ Section 536LP
- ⁴⁹ *Mohammad Shareef Hotak v Rasier Pacific Pty Ltd* [\[2025\] FWCFB 214](#) at [117]
- ⁵⁰ [\[2025\] FWCFB 214](#) at [132]
- ⁵¹ Transcript PN162-PN165
- ⁵² See for example clause 7.6 of the Services Agreement
- ⁵³ Definition of "Tolls" in clause 17.1 of the Services Agreement
- ⁵⁴ Noting the prohibition against such an order in section 536LP(3)