



DECISION

Fair Work Act 2009

s.536LU - Application for an unfair deactivation remedy

Sajid Saleem Warraich

v

Rasier Pacific Pty Ltd Trading AS Uber

(UDE2025/108)

COMMISSIONER LIM

PERTH, 6 NOVEMBER 2025

Application for an unfair deactivation remedy – applicant protected from unfair deactivation – whether deactivation complied with the Digital Labour Platform Deactivation Code – deactivation did not comply with the Code – deactivation unfair – reactivation ordered.

[1] Mr Sajid Saleem Warraich has applied to the Fair Work Commission under s 536LU of the *Fair Work Act 2009* (Cth) for an unfair deactivation remedy. Rasier Pacific Pty Ltd TA **Uber** is the Respondent to Mr Warraich’s application.

[2] There is no dispute between the parties – and I am satisfied – that:

(a) Mr Warraich made his application within the time period required by s 536LU of the Act; and

(b) Mr Warraich was protected from unfair deactivation at the time Uber deactivated him.

[3] The third matter I must consider is whether Mr Warraich’s deactivation was consistent with the Digital Labour Platform Deactivation **Code**. Section 536LJ(3) of the Act provides that 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.

[4] I conducted a hearing of the matter on Thursday 4 September 2025. Mr Warraich gave evidence in support of his case. Ms Laura Tierney, Uber Industrial Relations Lead, gave evidence for Uber. I granted permission to Dentons Australia Limited pursuant to s 596(2) of the Act to represent Uber.

[5] Having considered the evidence of the parties, I find that the Code applied to Mr Warraich’s deactivation; the deactivation was not consistent with the Code; and Mr Warraich’s deactivation was unfair.

[6] The detailed reasons for my decision follow.

2. Observations on the evidence

[7] It is convenient to make some observations regarding the evidence led in this matter upfront. I found Mr Warraich to be a credible and open witness. Mr Warraich gave evidence of his first-hand experiences and his answers were cogent. His evidence was also not materially challenged during cross-examination. Mr Warriach's evidence is a sound basis for fact-finding.

[8] I found that Ms Tierney's evidence was of low probative value. Ms Tierney was not involved in the complaints against Mr Warraich and was not involved in his deactivation. Her evidence was given from the perspective of someone who had read a report on the events that had occurred. Ms Tierney did not provide all the documentation that she supposedly relied upon in forming her witness statement, nor did she appear to have conversations with the 'human representatives' who had interactions with Mr Warraich. I have given her evidence little to no weight.

3. What were the events that led to Warraich's deactivation?

[9] Mr Warraich commenced working for Uber on or around 10 March 2021.

[10] Uber says that five complaints were received about Mr Warraich via the Uber Driver Platform. It is not controversial that the first time Mr Warraich saw the complaints was as part of these proceedings. Uber did not provide copies of the complaints (or even the specifics of the complaints) to Mr Warraich at the time they were received, or at any point before his deactivation.

[11] The complaints and the responses that were sent to Mr Warraich through the Uber internal communications system are detailed below.

3.1 First complaint

[12] On Tuesday 6 December 2022, Uber received a rider complaint via the Uber Driver Platform regarding Mr Warraich. The complaint relevantly stated:¹

'Asked driver to drop my female girlfriend at her house which was on the way home. He refused to change course without adding in extra step. We added in extra stop but he didn't want to change course. He got very aggressive and angry and left us on the side of the road in the rain. We are two young females (me with a baby) and got left in the rain. We felt very unsafe.'

[13] At 2:17am that same day, Uber sent the following message to Mr Warraich via its internal messaging system:²

'hi sajid saleem, we have received feedback from a rider about an incident on one of your recent trips that made them feel uncomfortable. we ask all riders and drivers to commit to our community guidelines and behavior like this is concerning and in direct violation of those guidelines. we conduct regular reviews of users on the app to ensure that they are adhering to these guidelines. those who fail to do so may be permanently removed from the app. it is common courtesy not to shout, swear or slam the car door. ensuring the safety and well-being of both riders and drivers is important to us, so we hope you can understand why it was necessary to reach out to you. thank you for understanding.'

[14] After receiving Uber's message above, Mr Warraich sent a message back that effectively said:

- When Mr Warraich was near the rider's destination, she asked him to go to two more stops that were not in the trip.
- Mr Warraich requested that she add the stops in through the app. The rider refused to do so and threatened Mr Warraich, saying that if he did not take her to the two additional stops, she would give him a negative rating and would make a fake report to Uber.
- Mr Warraich refused. The rider started yelling and abusing him, including attempting to slap him from the back seat.
- At this point, Mr Warraich ended the trip. He selected 'rider's behaviour' on the app as the reason why the trip was ended.

[15] At 6:54am, Uber acknowledged Mr Warraich's message and indicated that the matter would be escalated to the 'appropriate team for reviewal'.

[16] At 7:46am and 8:28am, an unidentified Uber representative sent Mr Warraich two messages, which stated:

- Abusive behaviour was not tolerated at uber.
- Mr Warraich's complaint would be investigated further to determine if the rider would continue to have access to Uber.

[17] Mr Warraich did not receive any further substantive messages with regards to this complaint or his response.

[18] Mr Warraich's evidence is that he remembers this particular trip, and his recollection was that there was no baby present and the events of the altercation were not as described in the complaint. His evidence is that the rider asked him to go to two additional locations that were not part of the original trip route. When Mr Warraich asked her to add the stops in the Uber app, she refused to do so and became verbally abusive, threatening to give him a one-star rating on the Uber app. The rider's behaviour escalated, and she attempted to slap him from her position in the back seat.³

[19] I accept Mr Warraich's account of this incident. It is cogent and consistent with his messages to Uber at the time. Uber did not present any evidence against Mr Warraich's account other than a copy of the original complaint.

3.2 Second complaint

[20] On Sunday 25 June 2023, a second complaint about Mr Warraich was received via the Uber Driver Platform as follows:⁴

'He let me in, made multiple sexist and assault-worthy comments to me, then made me get out unless I agreed to his trip conditions, which involved cancelling the trip and going off radar. I felt unsafe and feel he is not trustworthy as an Uber driver.'

[21] That same day at 5:48am, Uber sent Mr Warraich the following message:⁵

'hi sajid, we've recently received some concerning feedback from one of your trips regarding inappropriate behaviour. your access to the app has been temporarily blocked while we review this matter. A member of our team will be in touch soon. in the meantime, if you have any additional information or questions regarding the reported incident, please respond directly to this support ticket only.'

[22] Mr Warraich sent several messages back explaining that he had not done anything wrong and asked for his account to be reactivated. Mr Warraich ended up speaking with an unidentified Uber representative on the phone on or around Sunday 25 June 2023.

[23] On Tuesday 27 June 2023, Uber sent the following message to Mr Warraich:

'hi sajid, thank you for your time and patience while we reviewed this matter. this is to let you know that your access to the uber app has been reactivated. and i just wanted to let you know that we've received a report from one of your riders that you may have commented regarding riders gender and that they feel discriminated against. we'd like to remind you that uber does not tolerate any form of unlawful discrimination, harassment or abuse. we invite you to read uber's community guidelines, a shared standard of respect, accountability, and common courtesy that we expect all users to observe. in case helpful, we also encourage you to review the australian human rights commission's guide on the racial discrimination act 1995, which makes racial hatred unlawful. according to the australian human rights commission, racial hatred involves doing or saying something in public that is reasonably likely to offend, insult, humiliate or intimidate a person or group because of their race, colour, or national or ethnic origin. please note, we conduct regular reviews of users of the app. if feedback from other users suggests that there's been a violation of our community guidelines, it may lead to the deactivation of your account. Ensuring the safety and well-being of both riders and driver-partners is a top priority for uber, so we hope you can understand why it was necessary to reach out to you. thank you for understanding.'

[24] Mr Warraich's evidence is that the second complaint is false. Mr Warraich's position is that because Uber reactivated his account, it means that the complaint could not be substantiated.

[25] Regardless of Uber's findings on the complaint, I accept Mr Warraich's account. Uber did not present any evidence other than a copy of the complaint.

3.3 Third complaint

[26] On Tuesday 12 November 2024, a third complaint about Mr Warraich was received via the Uber Driver Platform as follows:⁶

'After booking was confirmed, I contacted the driver to confirm the pick up point. As advised by the driver, I waited at the ride-share pickup area. Upon arrival, the driver didn't stop at the ride-share pickup zone, instead went another 100 meter ahead and waved me to follow him. When I went to his vehicle, the driver was rude and state he won't take us anywhere and instead abused my wife saying 'I hate Chinese'. The reason the driver has mentioned for cancellation is also incorrect. We have photo of the driver at the ride-share pickup area of him sitting inside the vehicle'

[27] On Wednesday 13 November 2024, Uber sent the following message to Mr Warraich:⁷

'hi sajid, this is [redacted] from the community operations team. we are reaching out to let you know that we've received feedback from one of your riders that a comment made was interpreted as discriminatory during one of your trips. we understand that misunderstandings can occur, but it's important to remain mindful of the impact words may have on others. by considering the language being used, we contribute to creating a shared space of respect, accountability, and courtesy. in case helpful, we also encourage you

to review the Australian Human Rights Commission's guide on the Racial Discrimination Act 1995, which makes racial hatred unlawful. According to the Australian Human Rights Commission, racial hatred involves doing or saying something in public that is reasonably likely to offend, insult, humiliate, or intimidate a person or group because of their race, colour, or national or ethnic origin. We'd also like to remind you of Uber's community guidelines, which includes conducting regular reviews of users of the app that are reported for unlawful discrimination, harassment, or abuse. If feedback from other users suggests that there's been a violation of our community guidelines, it may lead to the deactivation of the account. We appreciate your understanding.'

[28] Mr Warraich replied with '??' and 'hello' that same day. No other messages were exchanged.

[29] Mr Warraich's evidence is that he recalls this trip and that it involved a pickup at Perth Airport. Perth Airport has clearly designated ride-share pickup zones and drivers are not permitted to pick up riders outside of these designated zones. Mr Warraich's account is that the rider was not at the designated pickup zone, and when Mr Warraich asked them to come to the pickup zone the rider responded aggressively. Further, after waiting for five minutes, the rider did not move to the pickup zone and so Mr Warraich cancelled the trip. Mr Warraich denies making any racist remarks to the rider.⁸

[30] Uber did not provide any evidence other than a copy of the complaint. I accept Mr Warraich's account of what occurred.

3.4 Fourth complaint

[31] On Sunday 13 April 2025, a fourth complaint about Mr Warraich was received via the Uber Driver Platform as follows:⁹

'We tried to get in the car and then pointed the rude finger at us when we were trying to get in the car.'

[32] On Sunday 13 April 2025, Mr Warraich received the following message from Uber:

'Hi Sajid, this is [redacted] from the community operations team. A rider has provided feedback that there may have been a verbal altercation on a recent trip on April 13th 2025, which is a breach of Uber's community guidelines. If you disagree with this feedback and have any information to share with us, please do so by replying to this message and our specialised team will take it into account. Anyone who accesses the Uber app is required to follow our community guidelines. Serious or repeated claims of verbal altercation of any kind may result in the removal of your access to the driver app. To know more about the reasons that can lead to the removal of access to the Uber driver app, please refer to the 'help keep one another safe' section, specifically "be alert" in the Uber community guidelines. We also have a course explaining the community guidelines that you might find helpful, click here to learn more. You may seek assistance or support from a person (other than a lawyer acting in a professional capacity) in relation to this message. We take the safety and well-being of all users seriously, so we hope you understand our position. Thank you for understanding.'

[33] That same day, Mr Warraich replied stating that he disagreed with the feedback and that all his trips conducted that night were completed smoothly without any verbal altercations.

[34] A few hours later, the following message was sent to Mr Warraich:

'hi sajid, thanks for sharing more information about your experience. we take safety seriously and want everyone to feel comfortable and respected when using uber. we review all feedback from both riders and drivers and investigate issues as necessary. having heard both sides of the story, we're now satisfied that this issue is resolved and no further action is needed from you. thank you for your understanding.'

[35] Mr Warraich denies that this incident occurred. Uber did not provide any evidence other than a copy of the complaint. I accept Mr Warraich's account.

3.5 Fifth complaint

[36] On Sunday 24 May 2025, a fifth complaint about Mr Warraich was received via the Uber Driver Platform as follows:

'Hi, I hailed my driver after he arrived at the pickup location. After seeing who I was he immediately started driving in the opposite direction. My uber rating is solid at 4.89, so I believe he profiled me after seeing my ethnicity. I also called him and was immediately hung up on.'

[37] Later that same day, the following message was sent to Mr Warraich:¹⁰

'Hi Ali,

This is [redacted] from the Community Operations team at Uber.

We've received a report from one of your recent riders that you may have refused service to a rider on the basis of their race/made inappropriate comments to a rider regarding their race while on trip. Due to the nature of this feedback, we've temporarily removed your access to the Uber app while we investigate further. If you have any information as to why this feedback may have been received, you can let us know by replying to this message and we'll take this onboard.

We look forward to hearing from you.'

[38] Ms Tierney's evidence is that on Tuesday 27 May 2025 at 2:19pm, an unnamed 'human representative' of Uber spoke with Mr Warriach.¹¹ Mr Warraich repeatedly denied any wrongdoing during this conversation.

[39] Mr Warraich's account is that there are many reasons why a trip may be cancelled. Mr Warraich explained that it is not uncommon for riders to select inappropriate pickup locations, such as bus stops or traffic lights, where it is unsafe for Uber drivers to pick them up.

[40] Again, Uber did not provide any evidence regarding this complaint other than a copy of the complaint itself. I accept Mr Warraich's account that he did not engage in the behaviour outlined in the complaint.

3.6 Preliminary Deactivation Notice

[41] On Friday 30 May 2025, Mr Warraich received the following message from Uber:¹²

'Hi, Sajid Saleem.

This is [redacted] 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 discriminatory behaviour, 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:

June 27th 2023: Notified you of a report that you may have had made comments regarding a [rider's] gender that made them feel discriminated against, which occurred on a trip on June 25th 2023.

November 14th 2024: Notified you of a report that you may have had a refused service on the basis of their race/made inappropriate comments to a rider regarding their race that occurred on a trip on November 12th 2024.

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 Uber 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 **5/30/2025**. 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.

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

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

Please note that any information provided will be subject to our Privacy Notice.

Once your request has been submitted, a member of our team will begin the review process. Please note, this can take up to 7-10 business days, but it may take longer. We'll send you a message letting you know the outcome of Uber's decision.'

[42] Mr Warraich responded the same day, denying any wrongdoing. Mr Warraich explained that riders can make false complaints to get a refund, and that Uber was his only source of income for himself and his family. Mr Warraich also requested a discussion with an Uber representative.¹³

[43] Mr Warraich and an unidentified Uber representative had a phone discussion on Wednesday 4 June 2025.¹⁴ During this call, the Uber representative explained to Mr Warraich that further details about the complaints could not be given due to Uber's privacy policy and that Mr Warraich had received two previous warnings for trips on Sunday 25 June 2023 and Tuesday 12 November 2024.

[44] Mr Warraich explained that the complaints were old and at the time he received them he had disputed them. Mr Warraich's position was that Uber had accepted his explanation and did not take any further action regarding the complaints.

[45] Mr Warraich received a message from Uber after the call, informing him that his deactivation would be reviewed.¹⁵

[46] On Saturday 7 June 2025, Mr Warraich received a final notice from Uber that his access to the Uber Driver app had been deactivated.¹⁶

[47] Ms Tierney was not involved in Mr Warraich's deactivation. Her evidence of the deactivation is as follows:

- (a) She reviewed the internal ticket regarding Mr Warraich's deactivation, which records actions taken by 'human representatives' within Uber.¹⁷
- (b) An unnamed representative from Uber's Community Operations team considered Mr Warraich's response to the Preliminary Deactivation Notice.¹⁸
- (c) Uber assessed whether the riders who made Complaint 2, Complaint 3 and Complaint 5 had any fraudulent indicators (a history of making complaints in bad faith) and determined that the riders did not have any fraudulent indicators.¹⁹ Ms Tierney did not provide any corroborating evidence about the riders or what constitutes making complaints in bad faith. It is also unclear from Ms Tierney's evidence whether the unnamed representative who assessed Mr Warraich's response to the Preliminary Deactivation Notice assessed the riders or the complaints. Ms Tierney did not give any detail on what information was considered other than 'fraudulent indicators'.
- (d) An unnamed member of Uber's Community Operations team decided that 'no further reasonable enquiries were warranted'.²⁰ No detail was given as to who made that decision or how it was made.
- (e) Uber decided that Mr Warraich's access to the Platform should be deactivated because it had formed the view that Mr Warraich had discriminated against riders on the bases of their sex and/or race while performing work.²¹
- (f) Mr Warraich was deactivated for receiving multiple complaints of discrimination, which was in contravention of Uber's Community Guidelines.²²
- (g) An unnamed Uber employee considered all the information before Uber regarding the complaints and determined Mr Warraich should be deactivated.²³

4. Was Warraich's deactivation consistent with the Code?

4.1 Was a deactivation warning given?

[48] Before deactivating an employee-like worker, a digital labour platform operator must give the worker a deactivation warning stating that the worker risks being deactivated for a reason related to the worker's conduct or capacity. The deactivation warning must:²⁴

- specify the reason for the warning (relating to the worker's conduct or capacity);
- state that the worker risks being deactivated from the digital labour platform if the reason for the warning is not remedied or repeated, or another conduct or capacity issue arises; and
- state that the worker may seek assistance or support from a person (other than a lawyer acting in a professional capacity).

[49] The deactivation warning must also include sufficient information so that a reasonable person in the worker's position can understand the matters in the deactivation warning.²⁵

[50] Uber submits that the message sent to Mr Warraich on Sunday 24 May 2025 as set out at [37] of this Decision, was a deactivation warning on the basis that it told Mr Warraich that Uber had received a report from a rider of alleged racial discrimination; Mr Warraich's access to the Uber Driver Platform was being suspended; and he could respond to the warning. This is a plainly ludicrous submission.

[51] The message sent to Mr Warraich on Sunday 24 May 2025 did not warn Mr Warraich that he risked being deactivated due to conduct or capacity; it told him that his access had been suspended due to a complaint, and it was being investigated. The message did not state that Mr Warraich was at risk of being deactivated, nor did it state that he could seek assistance or support.

[52] The Sunday 24 May 2025 message also did not contain sufficient information to enable a reasonable person in Mr Warraich's position to understand the reason for the deactivation warning, or how to remedy it. The message simply said that Uber had received a report from one of Mr Warraich's 'recent riders' that he may have refused service to a rider on the basis of their race or made inappropriate comments to a rider regarding their race. There are no details regarding the alleged incident, such as when it occurred or what was said. It is entirely reasonable that Mr Warraich would not know what the complaint was referring to or what he was meant to remedy.

[53] Uber submits that it is not required to provide details of the specific trip, date, time and location that are relevant to complaints as per the note to subsection 8(3) of the Code. Uber's submission appears to be that it withholds such particulars from deactivation warnings as a matter of standard practice to protect individuals from victimisation by Drivers.²⁶

[54] Uber's position is misguided. The note to subsection 8(3) does not give Uber *carte blanche* to withhold identifying information in a deactivation warning as a matter of practice. It must be read in the context of subsection 8(3), which requires an operator to include sufficient information so that a reasonable person in the worker's position can understand the matters in subsection 8(2). It would defeat the purpose of subsection 8(3) if an operator were permitted to withhold all but the most general of detail under the guise of protecting an individual's safety or security.

[55] Uber did not lead any evidence about Mr Warraich that would suggest that he potentially posed a risk to a complainant's security or safety. There was no evidence led about how the complaints were assessed, beyond considering the 'fraudulent indicators' of the complainants. There is no evidentiary basis to find that there were reasonable grounds for not disclosing details about the complaints to Mr Warraich.

[56] I find that Uber did not give Mr Warraich a deactivation warning and therefore, did not comply with section 8 of the Code.

4.2 Did the exception in subsection 9(1) apply?

[57] A digital labour platform operator is not required to give a worker a deactivation warning if the operator believes on reasonable grounds that the matter relating to the worker's conduct or capacity is such that it warrants immediate modification or suspension of the worker's access to the platform; or it is not reasonable to expect the operator to allow the worker to continue to perform work through the platform.²⁷ One or more reports or complaints made to a digital labour platform operator may constitute reasonable grounds for the operator's opinion about the worker's conduct or capacity.²⁸

[58] Uber argues in the alternative, that it did not have to give Mr Warraich a deactivation warning because the exception under subsection 9(1) of the Code applied as Uber received multiple reports about Mr Warraich's conduct, which constituted a reasonable basis for Uber to form a view pursuant to subsection 9(2).

[59] The exception in subsection 9(1) requires Uber to have reasonable grounds for its opinion that Mr Warraich's conduct warranted his access to the Uber Driver Platform being immediately modified. The onus is on Uber to prove it complied with the Code.

[60] I find that Uber did not have reasonable grounds to form its opinion that Mr Warraich's access to the Uber Driver Platform should be immediately modified for the following reasons:

[61] Uber's poor evidentiary case: The only substantive evidence put forward by Uber are the copies of the complaints and messages between Uber and Mr Warraich. The complaints are brief and generally broad. There is no detail from Uber about when the complained events occurred or in what circumstances. The circumstances of the complaints were largely filled in by Mr Warraich. I have no insight into how 'human representatives' assessed the complaints. There is minimal probative evidence that humans were involved in the process at all. Simply the words of the complaints in this case do not give rise to reasonable grounds.

[62] Failure to provide Mr Warraich with an informed opportunity to respond: Given the brevity of the complaints and evidence from Uber, I consider Uber's failure to give Mr Warraich an informed opportunity to respond or defend himself to be relevant in my assessment of whether there were reasonable grounds.

[63] Uber further contends it is an object of the Act to protect against unfair treatment and discrimination in the Australian economy. Uber submits that since the complaints made against Mr Warraich alleged racist and sexist behaviour, that by deactivating him, Uber was promoting Australia's anti-discrimination laws and that this should constitute a reasonable ground to

believe Mr Warraich’s conduct warranted immediate modification of his access to the Uber Driver Platform.²⁹ Uber also submits that a mere report of racial or sexual discrimination should constitute a reasonable ground.³⁰ This is – to say the least – an *interesting* submission.

[64] It is sufficient for me to say that promoting anti-discrimination laws in itself does not constitute a reasonable ground and does not negate the need to engage with any complaints in a procedurally fair and cogent manner. A complaint of racial or sexual discrimination without investigation or response does not give rise to a reasonable ground for the purpose of s 9 of the Code.

[65] I find that the exception in subsection 9(1) did not apply to Uber in this matter. It is therefore unnecessary for me to consider whether Uber complied with the rest of the Code. Uber’s deactivation of Mr Warraich was therefore not compliant with the Code.

5. The merits of Warraich’s application

[66] I now turn to consider whether Mr Warraich’s deactivation was unfair. In considering whether a person’s deactivation was unfair, the Commission must take into account the criteria in s 536LH(1) of the Act, which I have set out below.

5.1 Was there a valid reason for the deactivation related to the person’s capacity or conduct?

[67] The Full Bench in *Hotak v Rasier Pacific Pty Ltd*³¹ found that the principles for ascertaining valid reason in the context of s 387(a) of the Act with regards to unfair dismissals equally apply to s 536LH(1)(a) for unfair deactivations. The Full Bench summarised those principles as follows:³²

- In cases relating to alleged conduct, the Commission must make a finding on the evidence provided, whether on balance, the conduct occurred.
- 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.
- The digital labour platform operator bears the evidentiary onus of providing that the relied upon conduct took place.
- In cases involving allegations of serious misconduct, the *Briginshaw* standard applies.
- There must be consideration of whether the digital labour platform operator had a valid reason for the deactivation, although it does not need to be the reason given to the worker at the time of the deactivation.
- 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.

[68] I respectfully agree with the Full Bench and apply the extracted principles to this current matter.

[69] Uber submits that Mr Warraich discriminated against riders and failed to meet Uber's requirements regarding quality, service level and performance as set out in its Community Guidelines and the Services Agreement between Uber and Mr Warraich.

[70] Uber further submits that it assessed the complainants and did not find fraudulent indicators. Therefore, the Commission should be satisfied Mr Warraich engaged in a pattern of discriminatory conduct.

[71] As I have already noted throughout this Decision, Uber's submissions are not supported by a sound evidentiary basis. I accept Mr Warraich's evidence that he did not commit any of the wrongdoing alleged in the complaints.

[72] Uber made the interesting submission that Mr Warraich's explanations at the time the warnings were given were 'largely general, evasive and blame-shifting'.³³ Putting to one side that English is not Mr Warraich's native language, it is difficult to understand how Uber expected detailed explanations when it did not provide the specifics of the complaints to Mr Warraich.

[73] I find that there was no valid reason for Mr Warraich's deactivation.

5.2 Whether any relevant processes in the Code were followed

[74] I have determined above that Uber failed to comply with s 8 of the Code.

[75] For completeness, I find that Uber did give a preliminary deactivation notice and final deactivation notice that complied with ss 11 and 14 of the Code.

[76] Section 13 of the Code sets out the steps that must be taken after a preliminary deactivation notice is given. This includes the requirement that a 'human representative' must consider the worker's response and must make further inquiries as are reasonably warranted after considering the response. The 'human representative' who considered Mr Warraich's response was not called to give evidence. I find that Ms Tierney's evidence of reading the internal ticket and her simply asserting that the human representative did take the steps required by subsection 13(7) – (8) of the Code is not sufficient to discharge Uber's onus. I find that Uber also did not comply with these provisions of the Code.

5.3 Any other matters the Commission considers relevant

[77] I find the following matters to be relevant in my consideration of whether Mr Warraich's deactivation was unfair:

[78] Lack of procedural fairness: I consider it relevant to my consideration that all five complaints were put to Mr Warraich in vague terms. This denied him the opportunity to properly respond to the complaints. During cross-examination, Mr Warraich explained that he has a dash-cam in his car and so would have had footage of trips that gave rise to the complaints.

However, because he was not given the dates or timing of the relevant trips, he could not provide evidence that would support his case. By the time of this proceeding, the were no longer accessible. However, given that Uber never gave the details of the timing of the relevant trips, even in this proceeding, Mr Warraich still wouldn't have been able to look up the relevant dashcam footage even if he still had access to it.

[79] Uber reactivated Mr Warraich after Complaint 2: I also consider it relevant that Uber reactivated Mr Warraich's access without any further explanation after receiving Complaint 2, despite it relying on Complaint 2 in its Preliminary Deactivation Notice of Friday 30 May 2025. Ms Tierney did not explain why Mr Warraich's access was reinstated at that time. It suggests that Complaint 2 was not made out by Uber and yet it was still relied upon in his deactivation.

[80] Mr Warraich's service: Mr Warraich's evidence is that he worked through Uber for nearly five years and completed around 7000 trips. Uber did not dispute this.

5.4 Conclusion

[81] Having considered the evidence and legislative criteria, I find that Mr Warraich's deactivation was unfair. Uber did not comply with the Code in deactivating Mr Warraich and based on the evidence led by both parties, I find that there was no valid reason for Mr Warraich's deactivation. I have also given significant weight to the way Uber handled the complaints they rely upon in deactivating Mr Warraich as it was completely lacking in procedural fairness.

6. Remedy

[82] Mr Warraich seeks reactivation. The Commission may order reactivation where the person has made an application under s 546LU; the Commission is satisfied the person was protected from unfair deactivation; and the Commission is satisfied that the person has been unfairly deactivated.³⁴ As per my findings above, these conditions have been met in Mr Warraich's case.

[83] Section 536LQ of the Act 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.

[84] I am satisfied that it is appropriate that I exercise my discretion to order Mr Warraich's reactivation.

[85] Mr Warraich also seeks an order for lost pay. However, the parties did not provide evidence or submissions on the issue of lost pay. Accordingly, I direct the parties to confer with a view to reaching agreement on this matter.

7. Conclusion

[86] Mr Warraich was protected from unfair deactivation at the time he was deactivated, and his deactivation was unfair. I consider it appropriate to exercise my discretion to order Mr Warraich's reactivation, which is issued in [PR793486](#).

[87] The issue of lost pay will be dealt with after the parties have been given an opportunity to confer. To this end, I make the following directions:

- (1) The parties are to confer with a view to reach agreement on the issue of lost pay for Mr Warraich, including the quantum, using the principles set out in [131] of *Hotak*.
- (2) The parties are to advise my Chambers by email of the outcome of their discussions by 12.00pm AWST, Thursday 20 November 2025.



COMMISSIONER

S Warraich, Applicant.

P Will for the Respondent.

Hearing details:

2025.

Perth:

4 September 2025

Printed by authority of the Commonwealth Government Printer

<PR793485>

¹ Digital Court Book 160.

² DCB 161.

³ DCB 50 – 51.

⁴ DCB 164.

⁵ DCB 165.

⁶ DCB 167.

⁷ DCB 168.

⁸ DCB 56.

⁹ DCB 169.

¹⁰ DCB 172.

¹¹ DCB 95.

¹² DCB 173.

¹³ DCB 175.

¹⁴ DCB 177.

¹⁵ DCB 175.

¹⁶ DCB 181.

¹⁷ DCB, Witness Statement of Laura Tierney, 97 [22].

¹⁸ Ibid [23].

¹⁹ Above n 17, [24] – [25].

²⁰ Ibid [26].

²¹ Above n 17, [27].

²² Ibid [29].

²³ Above n 17, [30].

²⁴ *Fair Work (Digital Labour Platform Deactivation Code) Instrument 2024 (the Code)*, s 8(2).

²⁵ Code, s 8(3).

²⁶ DCB Respondent's Outline of Submissions, 86 [20].

²⁷ Code, s 9(1).

²⁸ Ibid, s 9(2).

²⁹ DCB, Respondent's Outline of Submissions, 85 [17] – 86 [19].

³⁰ Ibid [17] – [18].

³¹ [\[2025\] FWCFB 214](#).

³² Ibid [94].

³³ DCB, Respondent's Outline of Submissions, 91 [45].

³⁴ *Fair Work Act 2009* (Cth) s 536LP.