

## Article Information

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## Uber driver to be paid “lost pay” following unfair deactivation

**The recent Full Bench decision of the Fair Work Commission in *Hotak v Rasier Pacific Pty Ltd* [2025] FWCFB 214 has clarified the remedies available to employee-like workers of digital labour platform operators under the relatively new “unfair deactivation” provisions of the *Fair Work Act 2009* (Cth) (the Act). In this article, Ben Motro, Partner, and Emily Setter, Senior Associate, summarise the decision and its key implications for businesses.**

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### Case Summary

Mr Hotak, an Uber driver, had his account deactivated by Rasier Pacific Pty Ltd (**Uber**) on 8 April 2025 following an alleged physical altercation involving passengers. Mr Hotak denied the allegations, claiming he was assaulted after asking the passengers to stop using drugs in his vehicle.

Mr Hotak lodged an application under the “unfair deactivation” provisions of the Act. The parties agreed that Mr Hotak was an “employee-like worker” and Uber a “digital labour platform operator” to whom the unfair deactivation provisions applied.

Critically, after the application was filed, Uber voluntarily reactivated Mr Hotak’s account, and Mr Hotak recommenced work as an Uber driver.

Accordingly, Uber contended that because it had reactivated Mr Hotak’s platform access, the Commission’s jurisdiction (and ability to grant any remedy) had “disappeared”, and the application should therefore be dismissed.

### Full Bench Decision

The Full Bench ultimately rejected Uber’s argument that its voluntary reactivation of Mr Hotak extinguished the Commission’s jurisdiction. The Full Bench considered that such an interpretation was inconsistent with the statutory intent, and “*would undermine the remedial purpose of the provision and risk incentivising tactical reinstatements to avoid scrutiny or accountability*”.

Uber accepted that it could not, on the specific facts of the case, discharge its evidential onus to show that Mr Hotak was not “unfairly deactivated” by reason of compliance with the Digital Labour Platform Deactivation Code or otherwise. The Commission accordingly determined that there was not a valid reason for Mr Hotak’s deactivation, and that he was therefore unfairly deactivated.

The Full Bench accordingly ordered Uber reactivate Mr Hotak’s platform access.

Unlike Uber’s voluntary reactivation, the effect of the order is that Uber was required to take measures to restore Mr Hotak to the position he would have been in but for the deactivation. This extended to deeming Mr Hotak to have performed work on Uber’s platform on a regular basis from the date of his suspension to the date of reactivation, and ensuring Mr Hotak’s engagement was on the same terms as he was engaged immediately before his deactivation. It also ensured Mr Hotak could enforce the order, noting there are applicable penalties for non-compliance.

The Full Bench also indicated it will make an order to restore lost pay for Mr Hotak, after providing the parties with an opportunity to confer concerning the quantum of the lost pay.

Importantly, although the Full Bench determined that it has broad powers to make orders in respect of reactivation, it did not consider it had the power to remove negative reviews against him on Uber's platform. In doing so, the Full Bench said that the provisions did:

*"...not extend to reversing the consequences of events that occurred prior to the deactivation, even if those events informed Uber's decision to deactivate Mr Hotak".*

### **Key Takeaways**

- An application for relief from unfair deactivation will not fail because the digital platform operator voluntarily reactivates the worker's account after they lodge an application for relief from unfair deactivation. The focus is on whether the employee-like worker was protected from unfair deactivation at the time the deactivation occurs.
- The power to "reactivate" is a broad one. An unfairly deactivated worker is entitled to be restored to the position they would have been in but for the unfair deactivation.

### **Conclusion**

To the extent they have not already done so, businesses covered by the unfair deactivation laws should:

- Assess which members of its non-employee workforce are "employee-like workers" who are protected from unfair deactivation;
- Familiarise themselves with the Digital Labour Platform Deactivation Code;
- Ensure there is a valid reason (within the meaning of the Act) for deactivation of any employee-like worker; and
- Establish robust pre-termination procedures which comply with the Digital Labour Platform Deactivation Code.

If you have any queries concerning the implications of this decision or the unfair deactivation provisions for your business, please contact a member of our employment relations team for advice.