



HUMAN TRAFFICKING WORKING GROUP

Dr Andreas Schloenhardt (Coordinator)

The University of Queensland
TC Beirne School of Law

The University of British Columbia
Centre of International Relations

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CASE REPORT

Current as on: May 5, 2009

Case Name	<i>Fryer v Yoga Tandoori House Pty Limited</i>
Reported in	<i>Fryer v Yoga Tandoori House Pty Limited</i> [2008] FMCA 288 (Unreported, Cameron FM, March 13 2008). Cf <i>R v Yogalingham Rasalingham</i> (2007) NSWDC, unreported.
Date(s)	Period of Conduct: June 2–July 13, 2006 Date of Hearing: February 27 2008 Date Judgment Delivered: March 13, 2008
Court/Jurisdiction	Federal Magistrates Court (Sydney)
Matter	Application for Civil Penalties under the <i>Workplace Relations Act 1966</i> (Cth) s 719.
Parties	Yogalingham Rasalingam; Yoga Tandoori House Pty Ltd; Anabalagan Rajendran.

Case Details

Mr Rasalingam was the sole shareholder and director of four Indian restaurants in Western Sydney and the Blue Mountains. In 2006 he travelled to India to enquire as to the availability of Indian chefs to work for him in Australia. He hired the son of his Indian driver and housekeeper. This man, Anabalagan Rajendran, was brought to Australia on June 1, 2006, with no money, very little English, and complete dependence on Mr Rasalingam for accommodation, food and transport.¹

Mr Rajendran was not paid for his work between June 2, 2006 and the termination of his employment on July 13, 2006. He further states that he was not to be paid for his first year of work as Mr Rasalingam had paid for his ticket to Australia, although he was given a 'train allowance' of \$20 per week. Payment of the \$11,560.31 of wages owing began only after the commencement of investigations by a workplace inspector. Mr Rajendran worked from 9.00am to 12.00am, seven days a week for 40 days, until the commencement of investigations.

Mr Rasalingam claimed that \$7,000 had been advanced to Mr Rajendran's father in India, which Mr Rajendran would have to repay out of his wages. He also contended that Mr Rajendran was given more than \$20 per week, as he had been instructed to take money from the till if necessary, although this last claim was rejected by Cameron FM. It was further argued that Mr Rajendran was provided with free transportation, accommodation, clothing and food, and that Mr Rajendran had misrepresented his qualifications, being only qualified to work as a kitchen hand, not a chef. Furthermore, Mr Rasalingam disputed the hours alleged.²

The court found that Mr Rajendran had been denied every entitlement under the relevant award, and that a penalty of \$28,000 should be imposed. After applying a 35% reduction due to cooperation, this resulted in a penalty of \$18,200.³

Mr Rasalingam was also charged with slavery offences on July 17, 2006, which were substituted for the offence of Trafficking in Persons under the *Criminal Code* (Cth) s 271.2. He was found not guilty of the trafficking offence.⁴

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¹ *Fryer v Yoga Tandoori House Pty Limited* [2008] FMCA 288 (Unreported, Cameron FM, 13 March 2008), 6.

² *Fryer v Yoga Tandoori House Pty Limited* [2008] FMCA 288 (Unreported, Cameron FM, 13 March 2008), 9-12.

³ *Fryer v Yoga Tandoori House Pty Limited* [2008] FMCA 288 (Unreported, Cameron FM, 13 March 2008), 21.

⁴ Full case report of the criminal charges available at www.law.uq.edu.au/humantrafficking.