



Today's Daf In Review is being sent l'zecher nishmas Habachur Yechezkel Shraga A"H ben R' Avrohom Yehuda

Bava Metzia Daf Ayin Vuv

PEREK HASOCHER ES HA'UMNIN -- PEREK SHISHI

MISHNA

- If one hires workers and they tricked each other, they have nothing but complaints on each other (there is no legal remedy).
- If one hired a donkey driver or a wagon driver to transport wood for a bride's chuppah, or to transport flutes for a wedding or for a funeral, or if one hired workers to take his flax out of the water, or he hired them to do anything else that will cause a loss if not done, and the workers backed out of the deal and refused to do the work, then if there are no other people to hire at a normal price, the employer may hire workers even at a high price, or he may even trick the first workers to do the work for him.
- If one hired workers for a job and they backed out with only part of the work having been done, they have the "lower hand" (their wages are calculated in the way least favorable to them). If the employer is the one who backed out in middle of the job (and doesn't let them finish), he has the lower hand (the wages are calculated in the way least favorable to him).
- Any worker that does something different than he was told to do, he has the lower hand with regard to collecting his fee. Anyone who backs out of his deal, has the lower hand.

GEMARA

- The Mishna's first case says "and they tricked each other", not that "they backed out", which therefore suggests that the Mishna is referring to workers tricking each other, not an employer and worker tricking each other. The case must be where the employer told a worker to go and hire other workers, and the hiring worker tricked the workers he was hiring.
  - **Q:** What is the case? If the employer told him to hire workers for 4 zuz and the hiring worker went and hired workers for 3 zuz, why would the Mishna say that the hired workers have a complaint? They accepted the rate of pay! If the employer said to hire for 3 zuz and he went and hired for 4 zuz, then if the hiring worker told them he is responsible for their wages, then they have more than a complaint – they have a true legal claim for the extra zuz! **A:** The case must be where the hiring worker told them he would pay 4 zuz, but never accepted responsibility of payment on himself.
    - **Q:** We should make a determination – if the going rate for such workers is 4 zuz, they should be able to make a claim for 4 zuz, and if it is only 3 zuz, they should not even have a complaint on the hiring worker! **A:** The case is where some people hire workers for 4 and some hire for 3. They can say, had we known it was only for 3 we would not have accepted and would have looked for other employment. Therefore, they have a complaint, but no legal claim. **A2:** The hired workers are themselves field owners, who typically will not work for other people, and only accepted this employment because it was offered at more than the going rate. Their complaint is that had they known it was for less, they never would have agreed to do this work. **A3:** The workers are regular workers who normally accept a regular rate of pay, however, their complaint is, that because they thought it was a higher rate of pay, they went and did an extra special quality job.
    - **A:** We can also answer that the case is where the employer told the hiring worker to offer 4 zuz and he went and offered 3 zuz to the workers. Although we said before that they can't have a complaint, because they accepted that

rate of pay, their complaint is that if the employer was willing to pay more, why did the hiring worker offer less!

- **Q:** It is obvious that if the employer told the hiring worker to hire for 3 zuz and he went and offered 4 zuz, and the hired workers told him “we accept the terms of the employer”, they mean to accept the higher rate of pay. But, what if the employer said to hire for 4 zuz and he went and hired for 3 zuz, and the hired workers told him “we accept the terms of the employer”, what would the halacha be? Do they mean to say that we accept what you said as if the employer said it, and therefore they get 3 zuz, or do we say that they are telling him they do not trust that he is saying what the employer said, and therefore they mean to accept only what the employer truly said? **A:** Maybe we can bring a proof from the following case. If a woman tells a shaliach “Bring me my get”, and the shaliach then tells the husband “Your wife told me to accept the get for her”, and the husband then gives the get to the shaliach and says “this get is for you like she said”, **R’ Nachman in the name of Rabbah bar Avuha in the name of Rav** said, even when the get reaches the woman, she is not divorced. Presumably we can learn from here that the husband bases his instruction on what the shaliach said, because if he was basing on what the woman said, then she should become divorced when the get reaches her hand.
  - **R’ Ashi** said, this is really no proof. If the case discussed was the reverse – where the wife told the shaliach to be a shliach l’kalah and the shliach said he is a shliach l’holacha, and the husband then told the shliach “this get is for you like she said”, and on that case **R’ Nachman** would have said that she is divorced as soon as the get reaches the shliach, then that would be a proof that the husband instructs based on what the woman says, or if **R’ Nachman** would have said that she is divorced as soon as the get reaches her hand, that would prove that he holds that the husband instructs based on what the shliach says. However, in this case, since he says she is not divorced at all, it must be because he holds the shlichus becomes nullified, because the shliach said he will be l’kalah and not l’holacha.
- **A:** We can also say that the Mishna is referring to an employer who tricked a worker. Although the Gemara said that that would typically be worded as an employer who “backed out”, it may be that the Tanna refers to a case of backing out as being “tricked”.
  - The Gemara quotes a Braisa that shows that “tricked” may refer to “backing out”. The Braisa says, if one hires workers and they trick the employer (they back out of the deal) or the employer tricks them (backs out of the deal from his side), they only have complaints against each other, but no legal claim. The Braisa explains, this is only if the workers were hired for the day and did not yet travel to the worksite. But, if donkey drivers went to pick up produce to transport and there was no produce there, or workers hired to work a field went and found the field too wet to work it, he must pay them their full wages. However, he only needs to pay them the amount that a worker would be willing to take to sit idle from work. The Braisa continues, if the workers were hired for the job, they (the party who did not back out) only don’t have a legal claim if they did not yet begin to work. But, if they did begin to work, we assess the work that was done and they are paid that amount. For example, if they were hired to harvest a certain area for a fee of 8 dinars and they had harvested half the area, or they were hired to weave a garment for 8 dinars and they wove half the garment, then we pay based on the work they have done and they get 4 dinars. Even if the price of labor has increased so that the employer will now have to pay 6 dinars to complete the job, he must still pay them 4 dinars. Or, they can complete the work and get their full 8 dinars fee. **R’ Dosa** says we assess based on the work that still needs to be done, meaning, if there is still 6 dinars of work needed to complete the project, they only get paid 2 dinars, or they can complete it and get the full 8 dinars. The Braisa says, this is only if there will not be a loss if the work is stopped mid project. However, if there will

be a loss, the employer can hire other workers even at a high price (and the workers who backed out will have to pay for them) or he can trick the workers into finishing the job. How would he trick them? He could tell them that he will overpay them. How much can he spend on the replacement workers? Up to 40 or 50 zuz. The Braisa concludes, that this is only if there are no other workers to hire at a normal rate. If there are, he must hire those workers and can only have a complaint against the first workers, but no legal claim.

- The Braisa was taught in front of **Rav** and was taught as saying that if the workers (the donkey driver) showed up and there was no work for him, he must be paid a full fee. **Rav** said, my uncle (**R' Chiya**) said he would only give such workers the amount a worker would take to sit idle and not work, and you say the employer must pay the full rate!?
  - **Q:** The Braisa itself says that he doesn't have to pay the full rate!? **A:** The teacher of the Braisa didn't finish teaching that part when **Rav** made the comment.
  - **Others** say that **Rav** said that **R' Chiya** said he wouldn't pay these workers *anything*.
    - **Q:** The Braisa says that he does have to pay!? **A:** **R' Chiya** is talking about where the workers looked at the worksite the previous night, and should have realized there will be no work for them to do. Therefore, they do not have to be paid for showing up. The Braisa is talking about where the workers did not go and check out the field and therefore the employer should have told them not to come, and because he didn't, he must pay them.
    - **Rava** makes this distinction as well.
    - **Rava** also said, if workers were hired to draw water for a field and it rained (making the work unnecessary), it is the workers' loss and they need not get paid. If a river overflowed, making the work unnecessary, it is the employer's loss and he must pay the workers the amount it would take to have them sit idle.
    - **Rava** also said, if workers were hired to draw water for a field and the river that they were to draw from stopped flowing halfway through the day, if the river does not usually stop flowing, it is the workers' loss. If it usually stops midday, then if the workers are local people and know this, it is their loss. If not, it is the loss of the employer.
    - **Rava** also said, if workers were hired for a job and they finished it halfway through the day, the employer may give them other work to do, as long as that work is equal to or less than the level of difficulty of the first job. If he has no such other job to do, he must pay them full wages and can give them no other work to do.
      - **Q:** Why does he have to pay full wages? Why not the amount it would take to have them sit idle? **A:** **Rava** was talking about porters of Mechuza, who become weak when they don't work, and therefore do not want to sit idle.