



BUSINESS WEEKLY

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

DOUBLE PIZZA

Mr. Farber, the principal of Yeshiva High School, asked some students to stay after class to help set up for graduation. "Pizza and ice cream for those who help," he promised.

While the students were setting up, Mr. Farber called the pizza store. "I'm sending over eight students," he said. "When they come, please treat them to two pies and ice cream, on us."

The following day, the students asked Mr. Farber to order pizza and ice cream. "But I sent you to the pizza store yesterday!" he exclaimed, puzzled.

"In the end, the storeowner never gave it to us," the students replied. "He said that he can't give it without a credit card number. We tried calling the office, but it was already closed."

Mr. Farber called the pizza store. "I sent some students over yesterday," he said. "Did you give them pizza and ice cream?"

"Yes; I have an invoice for two pies and eight ice creams," said the storeowner. "Could you please give me your credit card number?"

"Is the invoice signed by the students?" asked the principal. "They said they didn't get the pizza."

"It isn't, but I don't write an invoice without giving the pizza," the storeowner said. "You told me to give it to them and I did. I don't know if your students are trustworthy."

Mr. Farber again questioned the students, who insisted that they didn't get the pizza. "You promised us pizza and ice cream for our work," they argued. "We don't know if the storeowner is trustworthy."

"This is ridiculous," Mr. Farber said to himself.

Mr. Farber picked up the phone to Rabbi Dayan. "I sent some students for pizza and ice cream yesterday," he said. "The storeowner says he gave it to them and demands payment, while the students say they didn't get it and ask that I order it for them. Whom do I have to pay?"

"The Mishnah (Shavuos 45a) calls this case 'chenvani al pinkaso, a storeowner on the basis of his ledger,'" replied Rabbi Dayan. "A storeowner who is instructed to provide payment to workers is believed with an oath to say that he gave them and collect from the

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BHI HOTLINE

CANCELLATION PART 2

I scheduled a carpenter to come to my house

to build some cabinets and shelves, and we agreed on a price. Before the scheduled date I found a handyman who charged less. I forgot to contact the first carpenter to cancel and he came on the scheduled date and wants to be paid in full what I was going to pay him.

Q: Am I obligated to pay his claim? Would there be a difference if I had called in advance and canceled?

A: Last week we discussed what happens when the carpenter arrives for the scheduled service call because the homeowner forgot to cancel the appointment. Now we will discuss whether the halachah is different if the service call was canceled in advance of the scheduled date.

Last week we said that traveling to work constitutes a kinyan for an employment agreement and the employer is obligated to pay the employee the agreed-upon amount (minus the amount deducted for a poel batel — an unemployed worker). Some authorities write that when such a kinyan was made, the employer's obligation to pay the employee is in accordance with the general parameters of paying full-fledged employees. Consequently, the prohibition of bal talin — delayed payment of an employee, is in force (Chazon Ish, B.K. 23:36).

If, however, the employee did not yet begin working so that the employment agreement was never finalized with a kinyan, the employer is not obligated to pay unless he caused the employee a loss by reserving his time and preventing him from finding



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employer, even if the workers deny having received the payment.”

“What about the students?” asked Mr. Farber.

“They are also believed with an oath to collect their wages,” said Rabbi Dayan. “The employer clearly owes his workers and does not know whether they were paid. The storeowner and workers should swear in each other’s presence so that each will be embarrassed in front of the other and, hopefully, the one lying will admit the truth” (C.M. 91:1).

“Does the payment have to be recorded in the ledger?” asked Mr. Farber. “What if the storeowner claims he paid but has no written record?”

“The storeowner is still believed if he has a definitive claim,” replied Rabbi Dayan. “The Rosh explains ‘his ledger’ is mentioned to teach that if the storeowner has a reliable ledger he can claim that he paid and swear on this basis, even if he doesn’t absolutely remember having given the payment. Since the employer admits having sent his workers for payment, there is circumstantial basis for what the storeowner recorded, so the ledger can be relied upon as a definite claim” (C.M. 91:4).

“So I have to pay double for the pizza and ice cream?” asked Mr. Farber. “How are they going to swear?”

“Nowadays, beis din usually advocates a compromise in lieu of an oath,” replied Rabbi Dayan. “The nature of the compromise is weighted in favor of the party who is believed, in principle. Thus, beis din would probably make you pay about 2/3 of the amount to each party.”



BHI HOTLINE

alternative employment. In other words, if the employee turned down another job because he was already scheduled to work at that time and now cannot find a replacement job, the employer who canceled must pay the employee as a poel batel.

There are some authorities who maintain that even in this circumstance the employer cannot be forced to pay the employee because the damage he caused was indirect and involves potential loss of profit (meni’as revach) rather than an out-of-pocket loss (Ketzos 333:2).

However, Shulchan Aruch (C.M. 333:2) and other Rishonim reject that perspective and obligate the employer to pay (Tehillah L’David). One reason to obligate the employer in this circumstance is that Chazal instituted that an employer may not cancel an employment agreement if it will cause the employee a loss of income; if he does cancel, he is obligated to cover the employee’s loss (Nesivos 333:3). Obviously, the employee then receives the discounted payment of a poel batel (C.M. 333:2).

When it is common for employees to charge a fixed amount for canceled appointments (e.g., a doctor), that custom is binding and the employer (i.e., the patient) must pay that amount.

Whenever the employer must pay for canceling an appointment, the payment is for damages rather than employment, and the prohibition of bal talin — delayed payment of an employee, does not apply (Chazon Ish ad loc.), although he might be violating divrei kabbalah — the words of the Prophets, if he refuses to pay immediately when he has the funds (C.M. 97:3; 339:7).

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MONEY MATTERS

Adapted from the writings of Harav Chaim Kohn, shlitza

BEIS DIN AND CIVIL COURT #16

Jury Duty

Q: Is a Jew allowed to serve on a jury in civil court, if called upon by the authorities?

A: If called for jury duty, it is permissible to serve on a jury that is established for dealing with all litigants of the population. Gentiles are also required to establish a legal system, although there is a dispute whether they are supposed to rule according to Torah law or according to their own system. They can also agree collectively to accept disqualified witnesses as valid. (See Responsa of Rema #10; Chasam Sofer vol. VI: likutim #14; Ha’amek She’eilah, Bereishis 2:3).

Since jurors are instructed to rule not only by the strict details of civil law, but also based on their understanding, one can also serve on a jury involving Jews, even if they should be adjudicating in beis din and not in civil court. (See, however, Mishneh Halachos 4:213.)

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