

BUSINESS WEEKLY



RESTORING THE PRIMACY OF CHOSHEN MISHPAT UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

Issue #600 | Vayikra | Friday, March 11, 2022 | 8 Adar II 5782

לע"נ הרב יחיאל מיכל בן ר' משה אהרן אורליאן



CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

SHORT A MINYAN

Rabbi Shpiel served an out-of-town community, with a bare *minyan* of Jews. For *Parashas Zachor* he "hired" two yeshiva *bachurim*, Yehoshua and Mordechai, to spend Shabbos in the community and guarantee a *minyan*. Mordechai was also supposed to *lein*, for an additional sum.

The two *boahurim* arrived Erev Shabbos; Rabbi Shpiel hosted them in his house.

When the three came to shul Friday afternoon, Rabbi Shpiel was informed that Mr. Levine was taken to the hospital just before Shabbos, accompanied by his son. Another member was overseas for business.

"I apologize," Rabbi Shpiel said to the *bachurim*. "Mr. Levine and his son were two of the regulars. It looks like we may not have *minyan* this Shabbos."

They waited for people to assemble, but in the end only nine came, including Yehoshua and Mordechai.

Rabbi Shpiel addressed his congregants. "Unfortunately, we don't have a *minyan*," he said, "but I request that people come to shul to pray together, regardless. Furthermore, it's *Parashas Zachor*. Although we cannot have regular *leining* tomorrow, we will at least read *Parashas Zachor* to fulfill the *mitzvah d'Oraysa*."

On Shabbos afternoon Yehoshua said to Mordechai: "If Rabbi Shpiel wants to pay us after Shabbos, I don't think we can take the money. In the end we didn't make the *minyan*."

"Why not?" replied Mordechai. "We did our job. We came for Shabbos; it's not our fault that there's no *minyan*!"

"And what about payment for your *leining*?" asked Yehoshua. "You didn't *lein*, other than the few *pesukim* of *Parashas Zachor*."

"I did all the preparation before Shabbos, though," replied Mordechai. "The *leining* itself is only the culmination of the job."

After Shabbos, Rabbi Shpiel thanked the *bachurim* for coming, and apologized for the mishap. "Your intentions were good," he said, as he gave them the money.

"I'm not sure we deserve payment," said Yehoshua.

"I believe you are," said Rabbi Shpiel, "but you're welcome to speak with your *Rebbi*."

Yehoshua and Mordechai approached Rabbi Dayan and asked:

"Are we entitled to our payment even though there was no minyan and no leining?"

"The *Gemara* (B.K. 116a) states that when a



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לע"נ ר' שלמה ב"ר ברוך וזוג' מרת רייכלה בת החבר יעקב הלוי ע"ה ווייל

POSTPONING PAYMENT

Q: My son recently got engaged. At the *l'chaim* in my *mechutan's* house, the *shadchan* came to join in our *simchah*. When I got home, I realized that the *shadchan* deserved to get paid, but it had slipped my mind at the *l'chaim*. The hour was very late, and it was difficult for me to travel to his home, which is quite a distance from mine, to pay him.

Did the *mitzvah* of *b'yomo titein secharo* (paying on the day work is completed) and the prohibition of *bal talin* (not withholding payment overnight) require me to set out at that hour to pay him?

A: First, we must emphasize that an employer does not transgress *bal talin* unless the worker asks for payment (*Shulchan Aruch, C.M. 339:10*). *Chazal* (B.M. 112a) derive from a *passuk* that an employer transgresses this prohibition only if he chooses to delay payment. If the delay occurs because the employee did not request payment, implying that he agrees to delay payment, the employer does not transgress *bal talin* (*Sma 339:19*).

The worker does not have to ask for payment verbally, however. If there is no proof that he has agreed to delay payment, the prohibition of *bal talin* applies. Therefore, if the worker approaches the employer when he completes the work without actually requesting payment – as is typical when someone finishes work – even if he did not actually ask for payment because he was embarrassed to do so, the employer must pay him immediately in order to avoid transgressing *bal talin* (*Ahavos Chesed 9:11*).

In your case, it would seem that when the *shadchan* came to the *l'chaim*, that was considered as though he requested payment. Moreover, some *poskim* rule that even if the employer does not transgress the prohibition of *bal talin* because the worker didn't request payment, he still may not delay payment (*Shaar Mishpat*, cited in *Pischei Teshuvah 339:7*; *Teshuras Shai 2:86* writes that this might be a Rabbinical prohibition); according to some *poskim* the *mitzvah* of *b'yomo titein secharo* still applies (see *Sifrei D'bei Rav, Parashas Ki*

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worker does the job he was instructed to do, he is entitled to pay, even if the work turns out unnecessary," replied Rabbi Dayan. "For example, a cab driver who was hired to pick up medicine, but the patient recovered meanwhile, is entitled to full payment" (C.M. 335:3).

"Moreover, if the driver was sent to pick up a package, but it was not available, he is still entitled to his pay, since he did the actual work of driving there and back, even though the primary job of picking up the package could not be done" (Nesivos 333:5; Pischei Choshen, Sechirus 12:2[5]).

"Nonetheless, if a shipper was sent to pick up a heavy load but returned empty, we reduce the pay a certain amount since there is less effort and gasoline expenditure in traveling empty" (k'poel batel) (C.M. 333:1).

"You *bachurim* came for Shabbos and joined the community for their services, so you are entitled to your pay, even though circumstances did not allow for the primary purpose, that of a *minyana*.

"However, since *leining* was not possible due to unforeseeable circumstances, Rabbi Shpiel does not have to pay the full amount, but Mordechai should receive partial payment for the preparation. [Had Rabbi Shpiel retracted without due cause, though, Mordechai would likely be entitled to the full amount, even though he was spared the effort of *leining*, since usually a *baal kriah* who prepared prefers to *lein* rather than to be idle.]" (see C.M. 335:1; Pischei Choshen, Sechirus 10:8; Aruch Hashulchan, O.C. 306:12).

"In truth, the issue of payment for a *mitzvah* on Shabbos is questionable," concluded Rabbi Dayan, "unless including also work before or after Shabbos (*b'havlaa*). Moreover, it says that there is no *siman brachah* in that money, but the common practice is to allow payment" (O.C. 306:5, 585:5; Mishnah Berurah 306:24).

Verdict: A worker who fulfilled the task for which he was hired is entitled to his wages, even if his work proved futile or could not accomplish the intended goal.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS Mechilah (Forgoing) #15 Receipt; Silence

לע"נ ר' יחיאל מיכל ב"ר חיים וזוג' ח'י בת ר' שמואל חיים ע"ה

Q: 1) If the creditor instructed witnesses to write a receipt for the debtor, is that tantamount to mechilah? 2) If the debtor asked the creditor to be mochel and he responded with silence, does that indicate acquiescence?

A: 1) If the creditor instructed witnesses to write a receipt and give it to the borrower, that is considered as *mechilah* already at that point.

However, if the creditor instructed them to write a receipt and hand it to him (the creditor), that does not indicate *mechilah*, because he might intend to hold it until the borrower pays (Shach 81:74; Minchas Pittim 241:2)

2) If the debtor asked the creditor to forgo and the creditor was silent, some write that if circumstances indicate that the creditor intended to forgo – that is *mechilah*, either because silence is like admission, or because *mechilah* in the heart that is evident, is *mechilah* (Maharit 2:45; Noda B'Yehudah Y.D. 1:67). Others say that the creditor must respond actively that he is *mochel* (Maharival 2:39; Shte Halechem #39).



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Seitzei 279 and Erech Shai 339:10).

The employer is not required to track down the worker in order to pay him, however. It is incumbent on the worker to appear before the employer for payment. Furthermore, even if the worker already approached the employer for payment and he didn't pay, it is enough for the employer to send a message to the worker that he can come collect payment; he is not required to go to the worker to pay him. The primary prohibition of *bal talin* is for the employer to withhold payment; once he has offered to pay, he does not have to track down the employee to pay him (Ahavas Chessed, loc. cit.; Nesiv Chessed 31; and Kesef HaKodashim. But cf. Mishpetei Tzedek (Garmizan) 149, and see Halachos Ketanos 2:31).

If the prevailing practice is that the employer (or customer) goes to the worker to pay him – such as when picking up a custom suit – then it is considered a condition of the employment agreement that the worker does not have to come to the customer to receive payment (Mishpetei Hachoshen 339:59).

The *halachos* discussed above would only apply to your case if either you, your *mechutanim*, or your children asked the *shadchan* to suggest the *shidduch*, which makes the *shadchan* your *po'el* ("employee") and introduces the possibility of *bal talin*. But if the *shadchan* thought of the *shidduch* and suggested it of his own accord, the obligation to pay him is not because he is a *po'el*, but because of the benefit you derived from his efforts – *neheneh* (C.M. 364:4 with Gra 13 and 185:13). In such an instance, the *halachos* of *bal talin* do not apply, just as they don't apply to withholding any other monetary obligation to another party (see Ketzos Hachoshen 75:13 and Chelkas Yoav, Even Ha'ezzer 30. Pischei Teshuvah [89:2] offers another reason why *bal talin* does not apply; see Halichos Yisrael 1 and the addendum to the *haskamah* of Rav Elyashiv to that *sefer*).

If it is difficult for you to pay someone, and he is not a *po'el*, you are allowed to delay payment slightly, just as you would be allowed to delay paying any other money you owe, without transgressing *bal talin*. Nevertheless, you must still pay him as soon as possible because of a prohibition derived from a *passuk* in *Mishlei* (3:28) that states: "Do not tell your fellow, 'Go and come back tomorrow and I will give it,' when [the payment] is already with you" (see CM. 97:3 and 339:9).

Some *poskim* argue that even if the *shadchan* first suggested the *shidduch* of his own accord, once the two sides instruct him to work on bringing it to completion, he is considered a *po'el* (see *Shu"t Lehoros Nasan* 10:122 and *Imrei Yaakov*, C.M. p. 252), and the *halachos* of *bal talin* do apply.

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