

יכול לחזור בו אפילו בחצי היום -

He can quit even in the middle of the day

OVERVIEW

רב asked נחמן if we assume that המגביה מציאה לחבירו is not קונה, why is the rule that the מציאה of a worker belongs to the בעה"ב (under certain circumstances). רב answered that a פועל is different from a 'regular' תופס since ידו is כידי בעה"ב. The גמרא asked how you can say that a פועל is different from a 'regular' תופס when רב ruled that a פועל is יכול לחזור בו אפילו בחצי היום. Our תוספות will first explain what the חידוש of רב is, and why it was necessary to cite him.

תוספות asks:

ואם תאמר ומאי קא משמע לן והלא בפרק האומנין (לקמן דף עז,א) -

And if you will say; and what is רב teaching us (by saying that a פועל יכול לחזור בו וכו'); for in האומנין -

לא פליגי רבי דוסא ורבנן -

באמצע היום a פועל is permitted to quit and the רבנן and ר' דוסא all agree that he may quit -

אלא דרבי דוסא סבר דיד פועל על התחתונה¹ ורבנן סברי דידו על העליונה² -

But rather their argument is that ר' דוסא maintains that the worker has the 'weaker hand', and the רבנן maintain that the worker has the upper hand -

אבל לכולהו יכול לחזור בו³ -

But all (רבנן and ר' דוסא) agree that the worker can quit, so what is רב teaching us when he rules that a פועל יכול לחזור בו וכו'.

תוספות answers:

ויש לומר דקא משמע לן דיכול לחזור בו וידו על העליונה כרבנן -

And one can say; that רב teaches us that worker can quit and ידו על העליונה, like the רבנן -

¹ The worker was hired for ten זוז for a day's work. The worker decides to quit after working half the day. However the price of labor increased and it cost now twelve זוזים per day to hire a worker (six זוזים for a half-day). According to ר' דוסא the owner deducts six זוזים from the pay of the original worker (for he needs to pay the new worker six זוזים for the remainder of the day's work) and pays the original worker four זוזים for half-a-day's work. The worker loses a זוז. This is the meaning of התחתונה על ידו.

² See previous footnote # 1. According to the רבנן the workers receive half their wages (five זוז) regardless what it will cost the owner to hire new workers. This means העליונה על יד פועל.

³ See 99 # אמ"ה that others claim that the subtext of תוספות question is why cite רב (that יכול לחזור בו) when we can cite the רבנן of ברייתא דוסא ורבנן. This is answered in the end of תוספות.

אפילו אם נתייקרו פועלים בחצי היום לאחר שחזר בו לא יפחתו לו מחצי שכרו –
Even if workers became more expensive after half-a-day when the
worker quit, nevertheless the employer cannot deduct from half his wages
which are due to him.

also agree רב דוסא ורבנן רב when רב found it necessary to quote גמרא explains why the תוספות that פועל יכול לחזור בו ⁴:

ולכך מיייתי מילתיה דרב דכיון דידו על העליונה אם כן אין ידו כיד בעל הבית ⁵ –
יד פועל רב rules that רב, **cited the ruling of** גמרא **And therefore** **כיד בעל הבית** the worker is not **על העליונה**, **this proves that the** יד of the worker **תופס** a since it is a מציאה of the בעה"ב in the זוכה therefore the question remains why is the **לבע"ח וכו'.**

וכן מוכיח בפרק האומנין (שם) דסובר כרבנן בשכיר יום⁶ ולא בקבלנות⁷ :
And the גמרא in פרק האומנין proves in a similar fashion that רב agrees with
the רבנן regarding a daily hired worker but not by a contractor.

SUMMARY

יד פועל על העליונה means that פועל יכול לחזור בו ואפי' בחצי היום.

THINKING IT OVER

1. How did תוספות (seemingly) initially understand the proof from רב, and how does תוספות finally understand it?
2. According to תוספות that the proof that יד פועל is not כיד בעה"ב is from the fact that ידו על העליונה⁸, how does the גמרא subsequently reject this proof?

⁴ See footnote # 3.

⁵ The proof that יד פועל is not כיד בעל הבית is only from the fact that יד פועל על העליונה, but not from the mere fact that יד פועל על התחתונה ר' דוסא (יד פועל על התחתונה) יכול לחזור בו [perhaps] because the פועל did something wrong; he had no permission to quit, and since his quitting caused a loss to the בעה"ב, the פועל is responsible. However if we assume that יד פועל על העליונה, this implies that he is permitted to quit and therefore does nothing wrong by quitting and receives his full wages. This proves that ידו is not כיד בעה"ב, for he is permitted to quit. If it would be כיד בעה"ב, then obviously the בעה"ב does not want him to quit (especially if it causes a loss to the בעה"ב). See נח"מ. See 'Thinking it over' # 2.

⁶ The גמרא (there, perhaps) understood from the statement of רב that פועל יכול לחזור בו implying that he may quit לכתחילה indicating that he has full permission to do so, and therefore ידו על העליונה like the רבנן.

⁷ A contractor must suffer the loss that the בעה"ב incurs (since the עבדים of פסוק applies only to a hired worker, but not to a contractor, therefore he is not permitted to quit and must suffer the loss). רב used the term פועל which indicates a hired worker and not a contractor.

⁸ See footnote # 5.