

ולא אמרת לי הב ליה בסהדי –

And you did not tell me; give it to him in the presence of witnesses

OVERVIEW

The גמרא explained that the חנוני may swear and collect from the בעה"ב, since he has a proper claim against the בעה"ב. The fact that you did not instruct me to pay him in the presence of witnesses indicates that you trusted him (but not I). תוספות will explain when an agent is expected to anticipate on his own the possible repercussions of his actions and when not.

תימה לימא ליה בעל הבית לתקוני שדרתיך ולא לעוותי¹ –

It is astounding! Let the employer say to the חנוני, 'I have sent you for my benefit, but not for my detriment', for -

אף על גב דלא אמר ליה הב ליה בסהדי היה לו מעצמו להשים על לב –

Even though the בעה"ב did not say explicitly to the חנוני, 'pay the worker in the presence of witnesses', nevertheless the חנוני should have understood this on his own that witnesses should be present at the time of payment.

תוספות will prove that we expect agents to understand certain things on their own, from a similar case:

כדאמרינן בפרק הכותב (כתובות דף פה,א) גבי אבימי דהוי מסקי ביה זוי בי חוזאי –

As the גמרא relates in פרק הכותב, concerning אבימי who owed money to people in בי חוזאי -

ושדרינהו ביד (רבא²) ופרענהו ואמר להו הב לי שטרא ואמרו ליה הנך סטראי נינהו –

And אבימי sent the money with חמא, and חמא paid them. Then חמא said to them, give me the note of debt, since you were paid, so they answered him these monies which you paid they were for a different [oral] loan; not for the loan of the note. אבימי rejected their claim.³

ומסיק התם דלא שנא אמר ליה שקול שטרא והב להו זוי⁴ –

And the גמרא concludes there, that there is no difference whether אבימי

¹ The owner can claim since by your action of paying the worker without witnesses you are causing me a loss, for I have to pay the worker (again), therefore you are not my agent and when you paid the worker (as you claim) you did it on your own and not as my agent, and so I owe you nothing.

² This is amended to read חמא.

³ Eventually the חוזאי presented the note to אבימי for collection. אבימי wanted that חמא should take responsibility for his loss, since he did not take the שטר back before paying them.

⁴ In which case חמא is certainly negligent for he had specific instructions not to pay until he had the שטר in his possession.

instructed חמא, **'take the שטר (first) and (then) give them the money'** -

ולא שנא הב זוי ושקול שטרא⁵ מחייב השליח -

Or whether חמא אבימי said **'give the money and take the שטר,'** in any event **the agent is liable** to pay אבימי for any loss that may ensue because they still had the שטר. The reason is -

משום דאמר ליה לתקוני שדרתיך ולא לעוותי -

Because חמא אבימי can say to חמא, **'I have sent you for my betterment; not for my detriment'**. You should have first secured the שטר. Therefore here too⁶ the בעה"ב has a claim against the חנוני that he should have paid the worker in the presence of עדים.

answers: תוספות

ויש לומר דהתם כיון דהזכיר לקיחת השטר -

And one can say, that there in כתובות, **since he mentioned taking back the שטר,** so therefore regardless how he said it, whether he mentioned taking back the שטר first or paying first, it is -

כאילו אומר עשה באותו ענין שיבא השטר לידיך אבל הכא לא הזכיר עדים כלל:

As if he told חמא, **do it (pay the loan) in such a manner that the שטר will be in your possession,** therefore since חמא paid before taking back the שטר, he is considered negligent and is חייב; **however here** the בעה"ב **did not mention witnesses at all** to the חנוני. That showed the חנוני that owner trusts that the worker will not lie.

SUMMARY

If an agent receives instruction, even if the order was reversed, he is to understand on his own to do it in the proper order. However an agent need not anticipate something which was not mentioned at all.

THINKING IT OVER

Can we differentiate in the case of a חנוני whether it is the first time the three (בעה"ב, חנוני and worker) are dealing with each other, or if they had such (satisfactory) arrangements [many times] previously?

⁵ In which case one may argue the חמא was not negligent, since he was told to pay (first) and (then) take the שטר; nevertheless even in this case חמא was negligent, for he should have understood this on his own.

⁶ It seems in fact to be a ק"י; if in the case of אבימי where even if he told him pay and take the שטר (where חמא followed the instructions) nevertheless חמא is liable (even though חמא is the מוחזק), for he should have understood on his own, then here the חנוני is certainly liable (for he does not have the excuse of חמא that he followed the instructions [and in addition he is the מוציא]).

⁷ The fact that חמא אבימי mentioned taking back the שטר indicated that he was suspicious of the חוואי; therefore חמא should have taken back the שטר first (תוספות הרא"ש).