

One who hires the craftsmen

השוכר את האומנין -

Overview

The משנה refers to the people being hired, as אומנין (craftsmen), such as carpenters or tailors who usually get paid by the job (like contractors). This is unlike פועלים (workers), who get paid by the day (or hour). תוספות discusses the usage of אומנין and פועלים in the משניות.

משמע ליה בין בשכיר יום בין בקבלנות -

To the תנא of our משנה the word אומנין **applies whether** we are discussing a person hired by the day, or whether we are discussing a contractor -

אבל בפרקין דבתר הכי (דף פג,א) נקט פועלים משום דפועלים לא משמע אלא שכירי יום -

However in the following פרק (השוכר את הפועלים) the תנא mentions פועלים (but not אומנין) since פועלים indicates only שכירי יום, but not קבלנות -

דבהכי מיירי כדאמר התם בזמן שאמר להשכים ולהעריב¹ -

For that פרק (of השוכר את הפועלים) is discussing שכירי יום only as the משנה states there, 'in the time when he told them to be up early in the morning or to remain late in the evening, etc.'; this can only be referring to שכירי יום but not to קבלנות.²

תוספות offer an additional proof that פועל refers to a שכיר יום, only:

ורב נמי דקאמר (לקמן עז,א) פועל יכול לחזור אפילו בחצי היום³ -

And also רב who rules that a פועל can retract even in the middle of the day; this rule of רב -

דוקא בשכיר יום איירי ולא בקבלן⁴ כדמוכח בשמעתין⁵ ולכך נקט פועל ולא אומן -

Applies specifically to a שכיר יום but not to a קבלן as is evident in our סוגיא, therefore רב mentioned a פועל (who is a שכיר יום only), but not a קבלן, where the rule of רב יכול לחזור אפילו בחצי יום does not apply.

¹ This proves that פועלים refers only to שכירי יום and not to קבלנות.

² The idea of a קבלן is that he gets paid by the job; he cannot be told when to come, as opposed to a שכיר who needs to work specified hours.

³ If a hired daily worker was hired for ten dollars a day, and after working half a day he decided to quit, the owner must pay him half-a-days wages (five dollars), even if it costs now more than five dollars to finish the rest of the day's work. The owner cannot deduct the extra money he needs to pay the new worker, from the worker who quit.

⁴ A קבלן accepted upon himself to complete a job for a hundred dollars, and after doing half the job he decides to quit. If in order to finish the job the owner must now pay sixty dollars to finish the job the owner can deduct ten dollars from the קבלן who quit; paying him only forty dollars for half the job. The owner need not suffer the loss, which the קבלן caused him by quitting in the middle.

⁵ See the גמרא (ד"ה אמר רש"י) עז,ב on גמרא.

asks on his assumption that פועל refers to a שכיר only, but not to a קבלן:

ואם תאמר דתניא לקמן בשמעתין (שם) השוכר את הפועל ובחצי היום שמע שמת לו מת -

And if you will say; but we learnt a ברייתא later in our סוגיא; 'one who hires a פועל, and at midday the פועל heard that a relative of his died -

או אחזתו חמה אם שכיר הוא כולי ואם קבלן הוא כולי -

Or the worker became feverish, the rule is, if he is a שכיר, etc. and if he is a קבלן, etc.' this concludes the ברייתא, the question is -

כיון דברייתא מיירי בין בשכיר בין בקבלן⁶ אמאי נקט פועל -

Since the ברייתא is discussing both a שכיר and a קבלן, why does the ברייתא mention פועל (which תוספות maintains refers exclusively to a שכיר), when the ברייתא -

הוי ליה למינקט אומן דמשמע תרוייהו -

Should have mentioned אומן, which indicates both a שכיר and a קבלן?!

answers:

ויש לומר דהכי קאמר אם שכיר הוא כדאמר השוכר את הפועל נותן לו שכרו -

And one can say that this is what the ברייתא meant; 'if he is a שכיר,' as stated previously the rule is the owner must pay his wages -

ואם קבלן הוא כך דינו⁷ -

However, continues the ברייתא, 'if he is a קבלן' (which is not what we were discussing initially), 'this is his ruling', etc.

replies to an anticipated difficulty:⁸

ומשום דבעי למתני ובחצי היום⁹ וחצי היום לא שייך למתני אלא¹⁰ אשכיר יום:

But because the ברייתא wanted to state 'at midday', and midday is applicable only by a שכיר יום, but not by a קבלן, therefore he writes פועל, where חצי היום is applicable.

Summary

The word אומן refers both to a שכיר and a קבלן, while the word פועל refers to a שכיר

⁶ The ברייתא clearly states; 'ואם קבלן הוא וכו' ואם שכיר הוא וכו'.

⁷ The answer is that the phrase הוא קבלן, is not referring back to the beginning of the ברייתא which states השוכר את הפועל (for that can refer only to a שכיר), but rather the ברייתא is adding an additional case (besides פועל) that if he is a קבלן (a new case) the ruling is, etc.

⁸ Why does the ברייתא mention פועל (which applies exclusively to a שכיר) and we need to explain that אם קבלן הוא is a new case, when the ברייתא could have just as easily stated השוכר את האומן and the two cases of 'אם שכיר הוא כו' and 'אם קבלן הוא כו' could have both been referencing the אומן.

⁹ See 'Thinking it over' # 1.

¹⁰ By a קבלן one would need to say, 'in the middle of the job', not 'in the middle of the day'; a קבלן is not subjected to the time of the day.

exclusively.

Thinking it over

1. השוכר את ברייתא of 'אומן' explains the reason why it does not say 'אומן' in the תוספות. 'וכו' הפועל וכו' is since he wanted to write 'ובחצי היום וכו', which is appropriate only by a פועל, but not by an אומן.¹¹ Seemingly however this answer is insufficient, for the ברייתא could have written אומן and instead of writing 'ובחצי היום', the ברייתא could have written 'ובאמצע מלאכתו' (which can apply to both a שוכר and an אומן)?!¹²

2. Why indeed is it that the word אומן (which means a craftsmen) refers both to a שכיר and a קבלן, while the word פועל (a worker) refers only to a שכיר?!

¹¹ See footnote # 9.

¹² See # 54-6. אוצר מפרשי התלמוד.