

אין להם זה על זה אלא תרעומת –

They only have grievances against each other

Overview

The גמרא cites a ברייתא (similar to our משנה) which states that if someone hired workers and either party rescinded, they only have grievances against each other. תוספות explains why there is no monetary claim.

תוספות asks:

קשה לרבינו יצחק דהא קיימא לן כרבי מאיר דדאין דינא דגרמי¹ בהגזל קמא (בבא קמא דף ק,א) -
The ר"י has a difficulty; for in פרק הגזל קמא we have established the ruling like גרמי, who judges cases of ר"מ

אם כן אמאי לא יתן להם כפועל בטל² כיון שעל ידו נתבטלו אותו היום³ -

Therefore, in the case where the בעה"ב reneged, why should he not pay them like an 'idle worker', since, on account of him, they were laid off that day, and did not work; he caused them the loss of their wages.

תוספות answers:

ויש לומר דמייירי שכשחוזר בו עוד ימצאו להשתכר -

One can say; we are discussing a case where they will still be able to hire themselves out, even after he retracted; so he caused them no loss –

תוספות responds to an anticipated question:⁴

ומכל מקום יש עליו תרעומת שעתה לא ימצאו אלא על ידי טורח -

But nevertheless the worker has תערומות on the בעה"ב, since now he will not find work, only with difficulty, while before the retraction he already had work.

תוספות anticipates a difficulty:

וכי מפליג בסמוך בין לא הלכו החמרים להלכו ומצאו שדה לחה⁵ -

¹ There are (generally) two levels of causing damage indirectly, one is גרמא the other גרמי. Of the two, גרמי is a more direct damage relative to גרמא, but less direct than damaging directly (היזק בידים). Regarding גרמא the rule is גרמא גרמי by מחייב, however regarding גרמי there is a מחלוקת, and (as תוספות states), we rule like ר"מ, who is גרמי by מחייב.

² כפועל בטל is the reduced wage a worker would be willing to accept, if he will be paid without doing any work. Here too (according to תוס' question), even though the employer caused them the loss of wages, nevertheless he need not pay them their full wages, since they did not work, rather he should pay them כפועל בטל.

³ See 'Thinking it over' # 1 & 3.

⁴ Since they can find other work, why is there (even) תערומות?

⁵ אבל הלכו חמרים ולא מצאו תבואה, פועלין ומצאו שדה כשהיא לחה.

And when the ברייתא shortly differentiates, between a case where the donkey drivers did not yet go to the place of employment, when the בעה"ב rescinded (in which case there is only תערומות, but no monetary payment), to a case where they went and found a wet field not suitable for work (in which case he pays them כפועל בטל) -

הוה מצי לפלוגי אף בלא הלכו כלל -

The ברייתא **could have also differentiated even in** a case where **לא הלכו כלל**, and that distinction would be (according to what תוס' just taught us) -

בין יכולין עוד להשתכר⁶ בין חוזר בו אחר שלא מצאו⁷ עוד להשתכר⁸ -

Whether they can still hire themselves out after he retracted, or whether he retracted after they cannot hire themselves out anymore; why was it necessary for the ברייתא to distinguish between הלכו and לא הלכו, when they can make this distinction in a case of **לא?הלכו⁹!**

תוספות responds:

אלא אורחא דמילתא נקט¹⁰ דבהלכו לא שכיח שימצאו עוד להשתכר -

However, the ברייתא mentioned cases in the nature of things, for when they went to the workplace, it is not common that they will find an opportunity anymore to hire themselves out (for it is already later in the day) -

ואם לא הלכו מסתמא כשבא לחזור חוזר מיד בעוד שימצא להשתכר:

And if they did not go yet to the workplace, presumably when he rescinds, he rescinds immediately early enough that there **is yet** sufficient time for the worker **to find a place to hire himself out.**

Summary

There is תערומות only when there is no loss of money (יכולים להשתכר) however if אין **אין** (יכולים להשתכר) they must be paid כפועל בטל **כפועל בטל** they must be paid להשתכר.

Thinking it over

1. **תוספות** asks that if the בעה"ב retracts he should have to pay the workers.¹¹ Why

⁶ In this case there is only תערומות.

⁷ Others amend this to read ימצאו (instead of מצאו).

⁸ In this case he pays them כפועל בטל.

⁹ When we wish to distinguish between two cases, it is always preferable to make the case difference as narrow as possible; the two cases should be discussing the same situation as much as possible. According to the ברייתא the two cases are more different (one is הלכו the other is לא הלכו) than by תוספות (they both are הלכו). See 'Thinking it over' # 2.

¹⁰ תוספות is (seemingly) saying that the two differentiations (of the ברייתא and תוס') are usually basically the same; by הלכו they cannot hire themselves out, and by לא הלכו they can.

¹¹ See footnote # 3.

does not תוספות also ask in the reverse; if the פועלים retract they should pay the בעה"ב, for the loss they caused him?!

2. תוספות offers an alternate distinction (which presumably has an advantage over the ברייתא).¹² However, granted that in תוספות distinction both cases are in a לא הלכו situation (as opposed to the ברייתא where one is הלכו and the other לא הלכו), nevertheless by תוספות one is by יכולים להשתכר and the other where it is אין יכולים (as opposed to the ברייתא where this distinction is [seemingly] not made); so what is the advantage of תוספות distinction over the ברייתא?!

3. There is a rule that preventing someone from profiting (מבטל כיסו, מניעת הריוח), is not considered גרמי, and there is no חיוב. Seemingly the case here, where the בעה"ב rescinds, is a case of מניעת הריוח; why does תוספות consider it גרמי?¹³

¹² See footnote # 11.

¹³ See קצות החושן סי' שלג ס"ק ב'.