חלה שלש ועבד שלש אינו חייב להשלים -

He was sick three and worked three; he is not obligated to complete

Overview

The גמרא cites a ברייתא which states, if an ע"ע was sick for three years and worked for only three years (of the required six years of servitude), he is not obligated to complete the full six years, but goes free. תוספות discusses the ramification of this law regarding teachers (nowadays).

יש שהיו רוצים לומר שאותם שכירים מלמדי תינוקות אם חלו חצי זמן -

There are those who wanted to say, that those teachers of small children who are hired for a term, **if** the teachers **were sick half the term** (and did not teach)**-**

כמו כן לא יהיו משלימים את זמנן כמו עבד עברי דהכא ויטלו כל השכירות כיון שהיו אנוסין -

They also should not be required to complete the term just like the עבד here in the גמרא, **and they can take their entire wages** without any deduction **since they were 'forced'** (it was not their fault).

תוספות disagrees:

וקשה דבפרק השוכר את האומנין (בבא מציעא דף עז,א) קאמר רב -

And it is difficult to accept their ruling, **for in פרק השוכר את האומנין, רב rules -**

פועל יכול לחזור בו ואפילו בחצי היום[1] -

A worker can retract and stop working, **even in the middle of the day -**

ופריך והתנן[2] השוכר את הפועל ושמע שמת לו מת או שאחזתו חמה יכול[3] לחזור בו -

And the גמרא there **asks, but we learnt [in a ברייתא]; 'one who hires a worker and** the worker **heard that someone** (close to) **him died, or he caught a fever,** the worker **may retract'**. This concludes the ברייתא. The גמרא infers -

טעמא דמת לו מת שאנוס הוא הא לאו הכי אינו יכול לחזור בו -

The reason he may retract is because **someone died so he is forced** to leave work, that is when we allow hm to leave (and get paid), **but if it is not so** (there is no emergency) **he cannot retract** (and get paid). This is contrary to s'רב ruling. This concludes the citation of the גמרא. תוספות continues:

והשתא אי היכא דאניס נוטל שכירותו משלם מאי פריך לרב -

---

[1] A worker was usually hired for the entire day (ten hours) and would be paid for the day (ten זוזים). Whenever the worker wishes to stop working, he may do so and the owner needs to pay him (pro rata) for the hours her worked (six hours – six זוזים).

[2] The רש"ש amends this to read 'והתניא' (instead of והתנן).

[3] The text there reads נותן לו שכרו (not יכול לחזור בו); תוספות continues to paraphrase the גמרא there.

But now if in a case **where he was אניס, he takes full wages**[4] (not only what he worked), **what is the question on רב** (according to the יש שהיו רוצים)?

דילמא היכא דמת לו מת דאניס הוא נוטל שכירות משלם -

Perhaps where someone died, so he is **an אניס,** therefore **he takes full wages -**

ורב אייתי בדלא אניס[5] **ואינו נוטל אלא מה שהרויח**[6] **-**

But רב is discussing a case **where** the worker **is not אניס, and he only takes what he profited** (meaning how much he worked). There is no contradiction!

אלא על כרחך אף כי נמי הוי אנוס אינו נוטל אלא מה שהרויח -

Rather perforce we must conclude that **even if he is אנוס he only receives** the wages **for what he profited** (by working) -

ואי לא אניס ידו על התחתונה[7] **דבעל הבית שוכר עליו אם באתה חבילתו**[8] **לידו או מטעהו**[9] **-**

And (it can be inferred from the ברייתא that) **if he is not אניס** and quits, the worker's **'hand is on the bottom',** meaning **that the employer may hire** other workers on **his** (the quitting worker's) expense, **if** the owner **has the packet** of the worker, **or he may fool him -**

כדאמר (שם עה,ב) **גבי השוכר את הפועל להעלות פשתנו מן המשרה -**

As the משנה **states regarding 'one who hired a worker to remove his flax from its soaking',** that if the worker quit he can be שוכר עליו או מטעהו -

והשתא פריך שפיר לרב[10] **-**

So now if we disagree with the יש"ר and maintain that one gets paid only for the work he did but not for the entire period he was hired for, **there is a proper**

---

[4] According to the 'יש שהיו רוצים', if the worker was אניס (he was sick), he gets paid the full wages agreed upon, not only for the amount of time he worked. Therefore (according to the 'יש שהיו רוצים'), when the ברייתא stated ('יכול לחזור בו') [נותן לו שכרו], it means that since he is אניס he may stop working and receive his full payment; even for the hours he did not work.

[5] According to the 'יש"ר', there is no contradiction between רב and the ברייתא, for רב is discussing a case where לא אניס, and the worker has a right to stop working, however he will receive wages only for the time he worked, not for the entire day; however the ברייתא teaches us that if the worker was אניס and quits, he receives his entire wage, even for the time he did not work. [If, however we disagree with the יש"ר, and maintain that there is never a case where the worker receives the entire wage, but rather only for what he worked, the contradiction between רב and the ברייתא is apparent. The ברייתא teaches that the only time the worker receives wages (for what he worked) is only if he is אניס, however רב maintains that he receives wages (for what he worked) even if he is not אניס.]

[6] תוספות refers to the work of the פועל as הרויח (what he profited from working).

[7] This expression ידו על התחתונה means that he (the worker) is in a bad situation (as opposed to ידו על העליונה where he has the 'upper hand').

[8] If the worker deposited tools or other items by the employer, the employer may sell these tools to hire other workers (to pay them more) to replace this worker who quit, since he was not אנוס. The worker is causing the employer a loss, by leaving in middle of the day.

[9] The employer may tell the worker who is quitting that he will pay him double (for instance) if he continues to work and then he needs to pay only what they agreed upon originally (not double wages).

[10] See end of footnote # 5 [in the bracketed area].

challenge to רב from the ברייתא.

תוספות concludes:

ואם כן מלמדי תינוקות נמי אם חלו לא יקחו אלא מה שהרויחו -

And therefore (since no worker receives more pay than for the time he actually worked [not for the entire agreed upon term]) **the מלמדי תינוקות as well, if they became sick, they receive** payment **only for what they worked** (even if they are אנוס) **–**

תוספות will now explain the difference between an ע"ע (who receives payment for the entire term [not only for what he worked]) and מלמדי תינוקות (who receive payment only for the time they actually worked):

דאין לדמותם כלל לעבד עברי דעבד עברי גופו קנוי לאדונו -

For we cannot at all compare the מלמדי תינוקות **to ע"ע, for an ע"ע his body is acquired by his master** (the master owns the ע"ע) -

הילכך חלה שלש אינו חייב להשלים דאין יכול לעשות מלאכה יותר מיכולתו -

Therefore if the עבד **was sick** for **three** years, **he is not obligated to make up** the three years, **for he cannot do work more than he is capable -**

אבל מלמד אין גופו קנוי אלא שכר עצמו ללמוד עד הזמן -

However regarding **the teacher, his body is not acquired** by his employer, **but rather** the מלמד **hired himself out to teach for the** entire **term -**

וכשאינו יכול להשלים לא יטול אלא מה שהרויח[11] -

And if he cannot complete the term, **he can only take** payment for **what he worked,** and no more.

תוספות offers an additional distinction between ע"ע and a מלמד:

ועוד נראה לחלק בין מלמד לעבד עברי דעבד היכא דחלה ג' ועבד ג' -

And there appears to be an additional distinction between a מלמד and an ע"ע, for an עבד in a case **where he was sick for three** years **and worked three** years -

היינו טעמא דאינו חייב להשלים משום דכתיב בספר (ישעיה טז[12]) **מקצה שלש שנים כשני שכיר[13] -**

---

[11] The difference between an ע"ע and a פועל seems to be that the master of the ע"ע buys the ע"ע (and as a result the ע"ע needs to work for him [with certain limitations]). Therefore even though the ע"ע did not work the entire time, nevertheless the master can have no claim against him since the price he paid was to be the owner of the עבד, and the עבד worked as much as he possibly could. [It is (somewhat) similar to someone who bought an item for a fixed period of time, and it did not meet his expectations, he cannot have any claim against the seller (unless there was obvious fraud).] See 'Thinking it over'. However when someone hires a worker, he hires him exclusively for the time he works for him (there is no ownership of the employer over his employee); therefore he gets paid only for the time he worked.

[12] פסוק יד reads; וְעַתָּה דִּבֶּר יְהוָה לֵאמֹר בְּשָׁלֹשׁ שָׁנִים כִּשְׁנֵי שָׂכִיר.

[13] The term שכיר is used in the תורה to refer to an ע"ע. See ויקרא (בהר) כה,מ where it states regarding an ע"ע that כשכיר יהיה עמו, and the גמרא previously on ד,א that שכיר זה קנוי קנין שנים. The נביא ישעיהו is telling us that the term of an ע"ע כתושב וגו'

This is the reason why he is not obligated to complete the six year term, **because it is written in the prophet; '(at the end of)[in] three years like the years of a שכיר' -**

אם כן מצינו דשנים דשכיר הן שלש שנים -

Therefore we find that the years of a שכיר are three years -

והיינו דכתיב[14] כי משנה שכר שכיר עבדך שש שנים -

And that is what is written; for he worked for you six years; double the wage of a שכיר (for a שכיר is only for three years) **-**

והילכך היכא דעבד שלש דהיינו שני שכיר אמר דאינו חייב להשלים ויטול שכרו -

So therefore, in a case **where the** ע"ע **worked three** years, **which are the years of a שכיר,** the ברייתא **stated that he is not obligated to complete** the term **and he can take his wages -**

כיון דעבדו ג' שנים דהיינו שני שכיר:

Since he worked for three years, which are the years of a שכיר. However by a 'regular' worker we do not find such dispensation, therefore he receives payment only for the time he worked.

Summary

A worker is paid only for the time he worked, not for the agreed upon term of work even if he is אנוס. An עבד who is חלה שלש gets paid for the full term either because גופו קנוי, or his 'real' term is only three years.

Thinking it over

1. תוספות explains that an עבד gets paid for the full six years (even if חלה שלש) because גופו קנוי.[15] Why therefore should the עבד not be paid in full even if חלה ד'?![16]

2. What would be the ruling in a case where an עבד was bought four years before the יובל, and he worked two years and was sick for two years; is he obligated to complete the two sick years?[17]

3. Is the explanation of משנה שכר שכיר mentioned here in תוספות in contradiction with the דרשה expounded previously (א,טו) that רבו מוסר לו שפחה כנענית?[18]

(a שכיר) is (really only) three years; when the תורה writes six years of servitude for an ע"ע that is משנה שכר שכיר, double of what he should work, that is if he is capable, but if he is not capable, then three years is sufficient.

[14] דברים (ראה) טו,יח.

[15] See footnote # 10.

[16] See בית לחם יהודה אות שצב.

[17] See מאירי (and בל"י אות שצג בסופו).

[18] See מהרש"א.