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PLAYFIGHTING: I CANCELLED MY PLAYGROUP SLOT

By: Rav Baruch Meir Levine

CANCELLING A PLAYGROUP

This past year, right after Tu'bshvat, I signed up my daughter in a playgroup next to my home, for the coming school year. Now it turns out that we will be moving to a new neighborhood. After doing some research I found out that there is a playgroup for my daughter's age on my new block and that they have an opening for the coming school year. This is a huge benefit for me, since travelling to my first playgroup at those times of the day would be as they say "a nightmare", and would take up time which I simply don't have. However, when I mentioned this to the Morah, she did not seem too happy about losing a slot in her playgroup. Am I halachically obligated to keep my daughter in the first playgroup, considering the difficulties it will impose?

A. The first thing to do in such a situation is to determine if the current playgroup slot can be filled. If indeed it can be filled you would have the right to back out, provided that the new child would not be more challenging for the Morah to care for¹. Nevertheless, even though you have the right to back out, *Chazal* allowed the Morah to have "ta'aromet" – a grievance, against you for causing her the inconvenience of replacing your slot. However, if she is able to find a replacement without difficulty, ta'aromet would not apply². Even so, according to one view in the *Shulchan Aruch*, since you would be reneging on your word you would be classi-

fied by *Chazal* as *mechusar amana* – lacking faithfulness³. However according to the other opinion, that in any case of a significant change in circumstances one may go back on his

word, this would not apply. The custom today is to rule like this latter opinion⁴.

If the slot cannot be replaced, you may be required to keep the slot. This is because anytime an employer hires a worker, even verbally, for a job and subsequently cancels the job, if at the time the worker was hired he could have found another job and is now no longer able to find one, the employer is considered as having caused him financial damage and is responsible to pay him his wages.

Accordingly, if by signing up, you caused the Morah to turn down additional children from enrolling in her playgroup, then even if you choose not to send your child there you would still be responsible to continue paying her until a replacement can be found⁵. However, you would not have to pay the full amount rather you may deduct the amount that a Morah would agree to forfeit in order to have one less child in their playgroup. The custom today is to pay half the normal wage⁶.

On the other hand, if the Morah still has empty slots available, this indicates that by signing up with her you did not cause her to turn

3 ה"א בהרמ"א (ח"מ ס"י ר"ד ס"ז) לדעת הסמ"ע (סי' של"ג סק"א). ועיין בפתי חושן (פ"ה ס"ב) שכתב דהסמ"ע מיירי אפילו כשהפועל יכול לקבל עוד עבודה בקלות. ויש לדון, אם ההורים בעצמם מוציא ילדה אחרת בעד המורה אם עדיין יש בו משום מחוסר אמנה.

4 כך פוסק הרה"ג רב נפתלי נוסבוים שליט"א ואמר לי הרב ראובן עבודי שליט"א, בנו של הרה"ג רב חוני עבודי שהיה דיין בבגדד, שכך פסקו הלכה למעשה בבית דין שלו

5 ש"ע שם (ס"ב) בדבר האבוד אפילו בלא הלכו משלם להם כפועל בטל.

6 ט"ו ח"מ סימן של"ג

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Parasha & Halacha Shiur Summary by
Rabbi Yitzhak Grossman

LOAN REMISSION (SHEMITAT KESAFIM) IN OUR TIMES

Maran, the *Shulchan Aruch* (CM 67:1) rules clearly, in accordance with the Rambam, that *Shemitat Kesafim* is an obligation, even in our times, albeit rabbinical.

The Rama however mentions that the custom in Europe was to rely on the poskim that it is not an obligation, an opinion reiterated by modern day poskim such as HaRav Moshe Feinstein zt"l, that it is "Midat Chasidut" (a praiseworthy act but not an obligation) in contemporary times.

However, we find from the writings of HaRav Yosef Chaim zt"l, the Ben Ish Chai, Parshat Ki Tavo, that *Shemitat Kesafim* was observed amongst Eastern Jews, and the form of a *prusbol*, used today in Jerusalem, is known to have been used in the Holy city for hundreds of years, as HaRav Ovadia Yosef's son, the current "Rishon LeZion" writes, in his monumental work, "Yalkut Yosef".

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1 ח"מ ס"י של"ג ס"ב ברמ"א, דכו"ע מודים דאין הפועל מחוייב לעשות מלאכה כבודה אם לא משלמים לו יותר בשביל זה

2 ש"ך שם (סק"א)

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down any potential enrollees. Therefore In such a case you would have the right to switch your child out of the playgroup unless a *kin-yan* was done to finalize the enrollment⁷. (This would depend on the custom. If it is customary that after signing, parents are obligated to send their children to that kindergarten, then the halacha too will consider the signing as a contractual and binding act, obligating the parent to pay for a full year unless a replacement can be found. (קנין סיטומתא). If this were the case, the halacha is that the Morah could not even have *ta'aromet* on you as there has been a significant change in circumstances as discussed earlier.

There is however a scenario where an employer may terminate an employment contract with-

out any halachic ramifications even when this will cause financial loss to the worker. This is in a case of an *oness* – an unavoidable termination. The classic example of this, brought down in *Shulchan Aruch*⁸ is one who hires a worker to water a field and before the start of the job it begins to rain unexpectedly thus negating the need for the job. In such a case the employer does not have to pay the worker for cancelling the job as this was due to an *oness*.

There are no hard and fast rules as to what constitutes an “unavoidable termination”. Certainly without knowing all the details of your situation and what you mean by “time which I simply don’t have”, it would be impossible to determine if your termination were halachically considered “unavoidable”. You would likely need to go to a Bet Din or a Dayan, who could personally hear your situation and possibly determine if it is indeed one of an *oness*, thus al-

lowing you to back out.

One important point though is, that if you had knowledge of the likelihood of this move at the time that you signed up yet did not inform the Morah of this, the fact that it is an *oness* would not absolve you from your responsibility. In such a case you should have informed the Morah of your possible plans and let her decide if she wanted to accept your child and the possible risk of losing a slot or rather look for another child. Since you did not do so, you would be responsible to reimburse her for all the payments she ends up losing because of your cancelation⁹, taking into account the fact that she had less work, as explained above.

7 הנה בדרך כלל קשה להוציא ממון בכה"ג מכה שנעשה בו קנין, דהתש" לומין שעושה ההורים בשעת ההרשמה, אינו ברור אם הוא בתורת פרעון או רק לערובן. ותופס ההרשמה שההורים ממלאים על הרוב לא חשיב שטר מכמה טעמים. אלא שיש פוסקים שסוברים דאם כבר קנתה המורה דברים בעד הן חשיב כהתחלת מלאכה כמו בהלכו החמרים והיו קנין, ולכאורה יש חלק אאכמ"ל. ועצ"ע בזה.

9 שם בס"א ועיין בסמ"ע שכתב בשם הטור "דלעולם לא יתחייב הבעה"ב אא"כ הוא היה יודע והפועל לא היה יודע דה"ל להבעה"ב להתנות ולגלות ל". ובג"ד אפילו אם לא ידע בבירור שיעברו למקום אחר לכאורה חייבים כמו בפסק הנהר שבעה"ב יודע רק שדרך הנהר לפסוק ואפ"ה חייב.

8 שם סי' של"ד ס"ב



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S·E·P·H·A·R·D·I·C HALACHA CENTER

105 River Ave, #301, Lakewood, NJ 08701
732.9300.SHC (742)
www.theshc.org
info@theshc.org

MIDWEST DIVISION
RABBI DOVID ARON GROSS
A 3718 SHANNON ROAD
CLEVELAND, OH 44118
P 216.302.8194
E MIDWEST@BAISHAVAAD.ORG

BROOKLYN DIVISION
RABBI DOVID HOUSMAN
A 2238 85TH STREET
BROOKLYN, NY 11214
P 718.285.9535
E RDHOUSMAN@BAISHAVAAD.ORG

SOUTH FLORIDA DIVISION
RABBI YOSEF GALIMIDI, MENAHEL
RABBI MEIR BENGUIGUI, SAFRA D'DAYNA
A SAFRA SYNAGOGUE
19275 MYSTIC POINTE DR
AVENTURA, FL 33180
E BD@BAISHAVAAD.ORG