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Paying for a Canceled Taxi Order

Question: A friend of mine reserved a place on a sherut to Ben Gurion airport for the middle of the night. When he awoke, he realized that he had made a mistake; his flight was the next night. He tried unsuccessfully to reach the taxi service to cancel and then went back to sleep. The taxi driver arrived as scheduled, and when my friend did not appear, the angry driver called him. My friend explained what had happened, but he did not pay the driver. The next night, he called the same taxi service (they did not realize that he was the same person who had called the day before). He did not feel that he had to pay double, as he made use of the transport service to the airport only once. Was he correct?

Answer: One (Reuven) who offers a worker (Shimon) a job can generally

back out of his commitment if a kinyan¹ had not been made and the job had not begun. However, in this case, Shimon (i.e., the taxi service, through its driver) already drove to Reuven's (i.e., your friend's) house. Consequently, Reuven cannot back out;² traveling to the place of employment was essentially the beginning of the job, which is analogous to a kinyan.³ Thus, Reuven should have to pay for the job he ordered, which Shimon indeed began. The fact that Reuven tried to cancel before the driver came is irrelevant since he did not succeed in doing so,⁴ unless the taxi service was responsible for not enabling him to do so,⁵ but this does not appear to be the case.

Perhaps your friend could argue that in this case, the fact that the work was “begun” is not significant. Beginning the work creates an obligation for Reuven to fulfill his commitment to use Shimon for the job. In this case, your friend was willing to use the taxi service for the same job at the same price, but he simply delayed the implementation by a single day – until the correct time of his flight. However, even if this argument is conceptually correct, the following factors may obligate your friend.

¹. An act of finalization.

². *Bava Metzia* 76b.

³. *S'ma* 333:6.

⁴. See the parallel case in *Gittin* 33b.

⁵. See *Bava Metzia* op. cit.

Even when Reuven is not bound by a kinyan to use Shimon's services, when a broken offer of work causes Shimon financial damage, Reuven must compensate him. The classical case is when Shimon could have found another job had he not accepted Reuven's offer and it is now too late to replace that job.⁶ In your scenario, it is quite clear that after your friend's cancellation, the driver could not pick up a new customer for that trip to the airport. The question, then, is whether there simply would have been an empty seat had your friend not reserved it or whether someone was turned away or redirected elsewhere. If someone was turned away, your friend should pay for his understandable yet negligent mistake. Your friend has no way of knowing if this is the case. If the driver or the dispatcher says that they did lose out on a fare, then this is an instance of BARI V'SHEMA, in which a plaintiff claims to be certain (BARI) that the defendant owes him money and the defendant says he is not sure (SHEMA) if this is correct. The standard p'sak is that there is a CHIYUV LATZEIT Y'DEI SHAMAYIM (a moral obligation) to pay in such a case.⁷

Another factor is that there are two possible claimants your friend must consider. The taxi company anticipated receiving a certain amount of money, as did the driver. If each receives a fee on a per-person basis, then either may have lost out because of your friend. Our limited research about such services indicates that the driver pays the company a fixed rate for their service of finding passengers, and he keeps all the fares. If so, even though your friend paid the company's driver the next night, the driver from the first night lost out, assuming it was not the same driver.

A minor factor that often plays a role in cancelled jobs is that when Reuven reimburses Shimon for his lost revenue, Reuven may reduce the amount because he spared Shimon the toil of the job he ended up not doing.⁸ However, once the driver came to your friend's house and called, any reduction in work, and thus in the fee, would be negligible at best.

We think that Reuven should have gone out to the driver the first night to offer to pay at least the great majority of the fare. This is all the more so true if your friend's address created a Chilul Hashem (for

⁶ *Shulchan Aruch, Choshen Mishpat* 333:2.

⁷ *Shulchan Aruch, Choshen Mishpat* 75:9. Further discussion of the application of the general rule to this specific case is beyond our present scope.

⁸ *Shulchan Aruch, Choshen Mishpat* 333:1.

example, if it was in a religious neighborhood). At this point, he can try to find out if the taxi service can determine who the driver was (or accept their part, if that is their arrangement). Doing so is at least menschlich (considering the small percentage the fare is of the total travel costs), and your friend appears to even be obligated to pay for his mistake.

