

## **Jewish Telegraph 06.07.2022**

Recent and ongoing threats of rail strikes have loomed large in news headlines in recent weeks.

*What are some of the ethics of going on strike?*

The greatest strike action in recorded history is, arguably, the request, nay, demand of Moses to the Pharaoh.

*“Three days your servants shall go...in the desert, as He (God) shall tell us”* (Exodus: 8:23 ). Moses was trying his best to get the Pharaoh to give a little space to a people crushed by a two-century history of enslavement. Moses’s efforts to negotiate relief from laborious work was not acceded to (Exodus 8:28). Yet his unceasing efforts to liberate his people from an unbearable yoke equate to the acts of a union leader, unwilling to see industry profit from slave labour. Ethically, the three-day reprieve called for by Moses is the closest example in the Bible to an organised strike. Thus, the concept of a work strike receives Divine endorsement.

Later, the principle of workers’ rights was enshrined in the divine right of the labourer to cease work once a week. “For (says God) they (the Israelites) are my servants, whom I took out of the land of Egypt; they shall not be sold as slaves” (Leviticus 25:42). This raises the matter of overtime and how this is paid on days ordinarily off, such as a Bank Holiday or in Jewish terms, a minor holiday such as Purim.

Significantly, the Babylonian Talmud states that it the aforementioned Leviticus verse which gives a worker the right to quit a job whenever the worker wishes to do so; even half-way through the day (Tractate Bava Metzia 10a). The problem with this is that employers will be wary giving flexibility to workers whenever they can get out of it. However, the ethical treatment of the worker appears to be the reason for the leeway given to “down tools” at any time. The same Talmudical tractate (folio 77a) details why the employers must be sensitive to labourers, for example, depending on their physical constitution. The Talmudic third century sage, Rava, rabbi of the city of Ctesiphon, Persia, said:

*With regard to a person who hires labourers to perform a specific task and the task is completed by midday, if he has another task that is easier than the first one, he may give it to them. Alternatively, if the*

*hirer has other work that is similar to the first one in difficulty, the hirer may assign it to them. But if the hirer has other work that is more difficult than it, the hirer may not assign it to them, and so must give to the labourers their full wages....”*

Later, rabbinic authorities reflect a powerful set of ethics in relation to working terms and conditions and strike action. Ethically, the professions may unionise, although teachers and doctors should not go on strike. This is because teachers are responsible for the spiritual and moral growth of young individuals, and doctors are vital for the physical health of the public. Thus, strike action is not an open-ended right for all.

Is the current barristers’ strike ethical? In Jewish terms, this would depend on whether legal services are comparable to medical services, or those of law and order. In a common law system, where the judge cannot arrive at a decision before there is a proper presentation of the sides, where appropriate, by barristers, a unique function of the English system, barristers arguably should not be allowed to go on prolonged all-out strike. By contrast, trains ceasing to run for several days, whilst inconveniencing greatly many citizens, is not necessarily prejudicial to the main functions of society; there are alternatives methods of transport, and they are not an emergency service!

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What does halacha have to say about one of the most divisive of phenomena in modern society: the right to strike?

1. There are two areas of halacha to investigate: the obligation of workers to fulfil their commitment to their employer and the workers' power to create rules of business practices.
2. The gemara (Bava Metzia 10a) says that a worker can back out in the middle of the day, which is what separates him from a slave, a status we should not have in relation to another human being. However, the baraita (ibid. 77b) says that if backing out will cause an actual loss to the employer, the worker may back out only if there is an oness (extenuating circumstance)
3. Rav Chayim D. Halevi (Aseh Lecha Rav II, 64) says that, under normal circumstances, one is not allowed to strike.

4. Rav S.Z. Orbach (Techumin V, pg. 287) says that in standard modern cases, strikes are worse than they were classically because they (sometimes) abrogate agreements that were made publicly, which make the agreement the equivalent of a case where a kinyan was made. Under such circumstances, beit din can force the workers back to their jobs (see Shach, Choshen Mishpat 333:4; Pitchei Teshuva, ad loc.:2).

Rav Orbach also posits that a worker may back out only if he is seeking freedom from work, but if he wants to continue working for his employer with better compensation, he may not break his agreement. The situation is even clearer regarding many strikes where the employee stops working while preventing others from replacing him.

5. Rav Avraham Shapira (Techumin V, pg. 297) distinguishes between one who wants to back out to raise his wages, which is not valid, and one who does so to compensate for the wages' decreasing buying power or the employer's failure to fulfill conditions of the agreement. In the latter case, the worker is entitled to take steps based on *avid inish dina l'nafshei* (limited rights to "take the law into one's hands").

6. The Tzitz Eliezer (II, 23) and Igrot Moshe (Choshen Mishpat I, 59) divorce the matter of strikes from that of ceasing to work, as the worker wants to continue working with different conditions. Rather, the relevant halachic parallel is that of agreements within groups of craftsmen. The Shulchan Aruch (Choshen Mishpat 231:28) says that just as the residents of a city may set regulations, so can the members of a trade group. However, in regard to the latter, since they are acting for their own personal interests, they need the agreement of an "important man" who is responsible for the welfare of the community. After meeting those conditions, they can decide that when a group strikes, peers will not be allowed to "break the strike."