

211262 - If his partner is absent from work, is it permissible for him to deduct from his earnings for that reason?

the question

I have a partner in the office where I work; we agreed to split the earnings evenly every month, but he was absent a great deal during the month, more than four times, apart from Fridays which is our day off. Please note that I am responsible for running the office, in addition to my work with him, and he does not have any kind of responsibility apart from his own work. If he is absent from work for one day, am I within my rights to deduct that day from the monthly earnings?

Detailed answer

Firstly:

The basic principle in the case of a dispute between two partners or parties to an agreement is that they should refer to the conditions agreed upon in the contract between them, so long as these conditions are not contrary to Islamic teaching, because Allah, may He be exalted, says (interpretation of the meaning): “O you who believe! Fulfill (your) obligations” [al-Maa’idah 5:1]. And the Prophet (blessings and peace of Allah be upon him) said: “The Muslims are bound by their conditions, except a condition that forbids something permissible or permits something forbidden.”

Narrated by at-Tirmidhi (1352) and Abu Dawood (3594); classed as saheeh by al-Albaani in Saheeh at-Tirmidhi.

Based on that, if there was an agreement between you to deduct from the earnings in the event of one of the two partners being absent, then there is no doubt that this deduction is permissible.

Similarly, if the normal practice in companies like yours is that if one of the partners is absent, a deduction is made in that case, and this is well known to you and your partner, then there is

nothing wrong with this deduction, because the basic fiqhi principle is that that which is well known according to custom is like a condition that has been stipulated.

See: Ghamz 'Uyoon al-Basaa'ir fi Sharh al-Ashbaah wa'n-Nazaa'ir, 4/206

Secondly:

If there was no agreement in writing concerning such situations, and there is no such consistent practice in the culture of similar companies, then the case of the partner who was absent must be one of two possibilities:

1.

That he was absent for a valid reason, such as sickness or some other problem. In that case no deduction should be made from his earnings, but you are within your rights to require him to appoint a deputy, at his own expense, to do his work, without expecting the company to bear the cost of paying that deputy. If he refuses to do so, then you are within your rights to cancel the partnership, because the agreement was to work together, and if he does not adhere to that, then you have the right to cancel.

2.

That his absence was not for a valid reason; rather it was due to carelessness or a reason that he could have overcome. In this case there was a difference of opinion among the scholars – may Allah have mercy on them – as to whether the partner is entitled to his earnings in full, or not.

Some of the scholars are of the view that the partner is entitled to his full share of the earnings, according to what is agreed upon in the contract, as it is sufficient that the other partner has the right to cancel the contract if any of the conditions are not met. If he did not decide to cancel it before the earnings were known, then the earnings are to be shared between them in accordance with what they agreed upon.

It says in Majallat al-Ahkaam al-'Adliyyah: Item no. 1349:

Entitlement to a share of the earnings is based on the conditions stipulated in the partnership contract, not on the work that was done. Based on that, if the partner whose stipulated role was to work did not work as stipulated, he is still to be regarded as if he did do the work. For example, if it was stipulated that both partners in a valid partnership should work, and only one of them did the work and the other did not, with or without a valid excuse, then because they are deputies of one another, if one partner does the work it is as if the other partner did it, therefore the earnings are to be shared between them in to the manner stipulated.

Ibn Qudaamah (may Allah have mercy on him) said:

If one of them works but the other does not, the earnings are to be shared between them, whether (the latter) did not work because of sickness or otherwise. If one of them asked the other to work with him, or to appoint someone else in his stead, he is within his rights to do so. If (the latter) refuses, then (the former) is within his rights to cancel the agreement.

End quote from al-Mughni, 5/7

The second view concerning this issue is that the partner (who does not do his work) does not deserve his full share of the earnings because he has not upheld his part of the agreement.

Al-Mirdaawi (may Allah have mercy on him) said:

What is understood from the words “if one of them is sick, the earnings are for both of them” is that if he did not do the work for no good reason then the earnings are not to be shared between them. This is one of the two views [of the Hanbalis], and the author [i.e., Ibn Qudaamah] thinks that this is the correct view.

End quote from al-Insaaf, 5/461

Shaykh Ibn ‘Uthaymeen (may Allah have mercy on him) said:

The more correct view concerning this issue is that if he did not do the work for no valid reason, then he does not deserve the earnings of the time during which he did not work, with no valid excuse. End quote from ash-Sharh al-Mumti‘, 9/436

Whatever the case, whether his absence was for a valid reason or not, you are within your rights to cancel the previous agreement and make a new agreement in which you state how earnings are to be shared out if either of the two partners is absent. This is more prudent for both of you, and less likely to lead to conflicts or create doubts concerning the honesty of either partner.

And Allah knows best.