

Is a Night Watchman Liable For Damages That Occur While He Was Sleeping on The Job?

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Question: Reuven is a night watchman at an office building. One night, he fell asleep on the job. When he woke up, he saw that vandals had broken windows and spraypainted graffiti on the walls. Is he liable for the damages? Furthermore, does he still get paid?

Answer: A night watchman is a *Shomer Sachar*. A *Shomer Sachar* is liable for *geneivah v'aveidah* and *peshia*. Falling asleep on the job is *peshia*; however, the Gemara in Shavuos says that a *Shomer* is not *chayav* for *geneivah* and *aveidah* if he is watching *karkah*. This includes anything that is attached to the ground, unless a special *kinyan* is made. According to most Poskim, a *Shomer* is also not liable for *peshia* on *karkah*. Accordingly, the night watchman would not be liable for the damage to the building because it is attached to the ground.

However, he is not paid for that night because he did not do his job.

If someone wants a *Shomer* to be liable for *karkah*, he would have to make a special *kinyan* with him in which he accepts responsibility to be *chayav* for damages that occur to it.