

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 23-0316
- Klageren:** XX
2770 Kastrup
- Indklagede:** Movia
CVR-nummer: 29 89 65 69
- Klagen vedrører:** Kontrolafgift på 1.000 kr. grundet manglende straks-check ind
- Parternes krav:** Klageren ønsker, at ankenævnet annullerer kontrolafgiften, og gør gældende, at han og hans gravide ægtefælle steg ombord på den slukkede bus ved endestationen, samt at han først skulle hjælpe hende og deres bagage på plads, inden han gik op for at vise ægtefællens pendlerkort til chaufføren og selv checke ind. Oppe ved chaufføren ledte han efter sit Rejsekort i sin pung, men kom i tanke om, at det var i hans taske nede ved sædet. Han hentede Rejsekortet og checkede ind, da kontroløren kom og sagde, han skulle have en kontrolafgift
- Indklagede fastholder kontrolafgiften
- Ankenævnets sammensætning:** Nævnensformand, dommer Lone Bach Nielsen
Vibeke Myrtue Jensen
Torben Steenberg
Helle Berg Johansen
Dorte Lundqvist Bang

Ankenævnet for Bus, Tog og Metro har på sit møde den 19. juni 2024 truffet følgende

AFGØRELSE:

Movia er berettiget til at opretholde kravet om betaling af kontrolafgiften på 1.000 kr.

Beløbet skal betales til Movia, der sender betalingsoplysninger til klageren.

Da klageren ikke har fået medhold i klagen, tilbagebetales klagegebyret ikke, jf. ankenævnets vedtægter § 24, stk. 2, modsætningsvist.

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Hver af parterne kan anlægge sag ved domstolene om de forhold, som klagen har vedrørt.

Klageren henvises til at søge yderligere oplysning om eventuel bistand i forbindelse med sagsanlæg fx på www.domstol.dk, www.advokatnoeglen.dk og /eller eget forsikringssselskab om eventuel forsikringsretshjælp.

SAGENS OMSTÆNDIGHEDER:

Klageren og hans ægtefælle steg ombord på buslinje 36 ved endestationen i Københavns Lufthavn.

Ifølge klageren stod chaufføren uden for den slukkede bus og røg, da de steg ombord. Klageren og ægtefællen, der var gravid, havde bagage, som klageren først skulle placere, og klageren skulle hjælpe ægtefællen behageligt til rette på et sæde. Derefter gik han op til chaufføren med ægtefællens pendlerkort og ledte efter sit Rejsekort, som han kom i tanke om, var i hans taske nede på sædet. Mens han gik ned og fandt Rejsekortet i tasken, kom der en kontrollør og spurgte ham om billet. Klageren checkede ind og fortalte kontrolløren, at motoren endnu ikke var tændt, da de steg ombord. Klageren ville ikke vise ID, og kontrollørerne bad dem om at stige af bussen og truede med at tilkalde politiet. Herefter steg de af bussen, og klageren viste sit ID.

Sagens faktiske klokkeslæt:

Bussen ankom til lufthavnen:	kl. 10:20:33
Kontrollørerne loggede deres klargøring til at stige på bussen:	kl. 10:23:20
Kontrollørernes medarbejderkort blev checket ind	kl. 10:23:36 og kl. 10:23:39
Klagerens Rejsekort blev checket ind:	kl. 10:24:30
Bussen afgik fra stoppestedet:	kl. 10:28:32
Kontrolmærke blev sat på klagerens Rejsekort:	kl. 10:34:28
Kontrolafgiften blev færdigudstedt:	kl. 10:36:28


Kontrolløren lavede et notat på kontrolafgiften om, at chaufføren havde oplyst, at klageren og ægtefællen kun havde vist ægtefællens pendlerkort ved påstigning og derefter havde sat sig ned i bussen, samt at klageren rejste sig hurtigt, da kontrollørerne nærmede sig bussens fordør:

Ny besked	Cf er forespurgt, cf forklare at kunden kommer ind i bussen og viser kun billet til hans kone, hvorefter de sætter sig i bussen. Og rejser sig hurtigt da vi nærmer os fordøren
Ny besked	Kunden sidder i bussen da vi stiger på, da han ser os rejser han sig og tjekker ind forrest i bussen. Kunden er på ingen måde samarbejdsvillig og det tager meget lang tid at få kunden til at fremvise ID

Den elektroniske kontrolafgift:

Zone	004
Linje	36
Bus nummer (Gåseddel)	3313
Køretøjs nummer	
Endelig destination	
Stop ID	42520
Stop	Københavns Lufthavn
Påstigning	29-08-2023 10:23:20
Udstedt dato/tid	29-08-2023 10:36:28
Stået af	29-08-2023 10:37:36
Passager tal	2
Kontrol spørgsmål stillet	Ja
Kunden har forespurgt chauffør	Nej
Jeg har forespurgt chauffør	Nej
Kort inddraget	Nej
Sprog	Ukendt
Årsag	Rejsekort checket ind efter kontrollørs påstigning

Klagerens rejsekorthistorik:

	21	29-08-2023 10:24	Linje : 36 Københavns Lufthavn	10:55	Linje : 5C Korsvejens Skole	-18,00	119,30
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Aktivitet	Type	Dato / Tid	Sted
75	Check ind	29-08-2023 10:24:30	Københavns Lufthavn
75	Kontrolmærke	29-08-2023 10:34:38	Københavns Lufthavn
76	Check ud	29-08-2023 10:55:27	Korsvejens Skole

Normalpris

Betal for : Afstand 1 x Voksen 18,00
1 zone

Total Alle priser er i kr. 18,00

Klageren anmodede samme dag, den 29. august 2023, Movia om at annullere kontrolafgiften og gjorde gældende, som refereret ovenfor:

“I tried to board bus number 36 from Copenhagen Airport to Korsvejens Skole at 10:22 AM today (29-Aug-2023) with my spouse. We were in rush to get into the bus as the departure time was near. which we eventually boarded. As we had luggage and my wife was pregnant, we first got into the bus from front door and kept the luggage. I settled my wife on comfortable seat and went to the chauffeur to show my wife's Dot Travel Pass valid for zone 1,2,3,4. Then in the mean time I was getting my Rejsekort card from my backpack, the inspector came and asked to showcase the valid ticket. I checked-in my card and explained that bus has to still start the journey as the chauffeur was still out on road and smoking. He ignored all my explanations and started to give me threat that he will call police if I didnot share my id with him. Also, he told me and my wife to get off the bus so that the bus can start the journey. After getting off, I shared my CPR ID and he fined me even though he himself acknowledged about our intentions were not to travel without tickets. He also told us that we can write Movia for cancelling the fine by explaining the situation. His id is [udeladt]. Can you please look into this and help to levive the fine imposed as I was packed up with luggage and sorting things with bus still not started for its journey. You can even have a look into the video recording of the bus for whole incident.”

Movia fastholdt kontrolafgiften og begrundede det med, at klageren ikke havde checket ind straks, han steg om bord på bussen, hvor han havde passeret check ind-standeren, samt at kontrolløren havde noteret, at klageren sad ned, da kontrolløren steg ombord:

“Unfortunately we cannot cancel your inspection fee

We understand, that it can be upsetting to receive an inspection fee. Movia's ticketing system is based on self-service and it is your own responsibility to check in your rejsekort immediately upon entering the bus.

When travelling with Rejsekort, you must check in your rejsekort immediately upon boarding. If you pass the card reader without checking in your rejsekort, you will have started your journey without a valid ticket. Check in at a later point will not be valid.

When you met the ticket inspectors in the bus on the day in question, your rejsekort was not checked in immediately upon boarding. The inspector has noticed that you were sitting in the bus when boarding and that you did not want to check in until afterwards.

We have not found any special circumstances in this particular case that prevented you from making a correct check in. It is therefore correct that an inspection fee has been issued.”

Derefter indbragte klageren sagen for ankenævnet, hvor Movia har oplyst, at bussens Rejsekort-udstyr kan benyttes til check ind, selv om en bus holder slukket ved endestationen.

Movia har fremlagt loggen fra de to check ind-kortlæsere i bussen, der viser, at de blev tændt kl. 04:52 og kl. 04:53:

Kortlæser 13292f:

04:52:22	VAL	13292f		1	1 Start	cold start
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04:53:35	VAL	13292f	3	71	SPS connection startup	SPS connection startup
04:53:36	VAL	13292f	3	78	UD files upload successfull	UD files upload successfull
04:54:18	VAL	13292f	3	76	EOD files download successfull	EOD files download successfull
04:54:33	VAL	13292f	2	58	EOD files version	
04:54:34	VAL	13292f	3	78	UD files upload successfull	UD files upload successfull
04:54:34	VAL	13292f	3	76	EOD files download successfull	EOD files download successfull
04:54:35	VAL	13292f	3	76	EOD files download successfull	EOD files download successfull
04:54:36	VAL	13292f	3	76	EOD files download successfull	EOD files download successfull

Kortlæser 132dcc:

04:53:20	VAL	132dcc		1	20 SPS connection failure
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04:53:27	VAL	132dcc	3	78	UD files upload successfull	
02:00:00	VAL	132dcc	3	78	UD files upload successfull	
04:53:36	VAL	132dcc	3	75	EOD files download startup	
04:54:28	VAL	132dcc	3	76	EOD files download successfull	
04:54:45	VAL	132dcc	2	58	EOD files version	
04:54:45	VAL	132dcc	3	78	UD files upload successfull	
04:54:46	VAL	132dcc	3	76	EOD files download successfull	

Loggen fra kontrollørernes check ind på medarbejderkort og klagerens efterfølgende check ind:

13292f:

10:00:02	VAL	13292f	3	78	UD files upload successfull	UD files upload success
10:23:36	VAL	13292f	3	101	Screen displayed	Text: MEDARBEJDE
10:23:38	VAL	13292f	3	101	Screen displayed	Text: CHECK IND
10:23:39	VAL	13292f	3	101	Screen displayed	Text: MEDARBEJDE
10:23:41	VAL	13292f	3	101	Screen displayed	Text: CHECK IND
10:24:30	VAL	13292f	3	87	Successfull ticketing transaction	Card number : 308430 20
10:24:30	VAL	13292f	2	104	Transaction time	TTIM01: 83
10:24:30	VAL	13292f	3	101	Screen displayed	Text: HAVE A NIC
10:24:32	VAL	13292f	3	101	Screen displayed	Text: CHECK IND

ANKENÆVNETS BEGRUNDELSE FOR AFGØRELSEN:

Således som sagen foreligger oplyst med de elektroniske data fremgår det, at klageren checkede ind ca. 1 minut og 10 sekunder efter, at kontrollørerne loggede deres klargøring til at stige ombord på bussen, og ca. 50 sekunder efter kontrollørerne checkede ind på deres medarbejderkort.

Klagerens forklaring er modsagt af kontrolløren og chaufføren, der observerede, at klageren havde sat sig ned og rejste sig, da kontrollørerne nærmede sig bussen.

Kontrollørens notat om egne og chaufførens observationer blev lavet i umiddelbar forbindelse med kontrolafgiftens udstedelse.

Selv om bussen endnu ikke havde forladt stoppestedet på klagerens tidspunkt for check ind, finder ankenævnet, at det i relation til de Fælles landsdækkende rejseregler om at checke straks efter påstigning, vejer tungere, at klageren først checkede ind efter, at kontrollørerne var steget om bord, end at bussen stadig holdt stille på tidspunktet for klagerens check ind.

Kontrolafgiften for manglende straks-check ind blev dermed pålagt med rette.

Da det ikke er en betingelse for at pålægge en kontrolafgift, at passageren bevidst har søgt at unddrage sig at betale for rejsen, finder ankenævnet, at der ikke har foreligget sådanne særlige omstændigheder, at kontrolafgiften skal frafaldes.

RETSGRUNDLAG:

Ifølge lov om trafikkselskaber § 29 kan selskabet udstede kontrolafgift og pålægge ekspeditionsgebyr til en passager, der ikke på forlangende foreviser gyldig rejsehjemmel.

I de Fælles landsdækkende rejseregler (forretningsbetingelser), som trafikvirksomhederne har vedtaget, præciseres hjemmelen til udstedelse af en kontrolafgift.

Det anføres således bl.a., at passagerer, der ikke på forlangende viser gyldig rejsehjemmel, herunder er korrekt checket ind på Rejsekort til deres rejse, skal betale en kontrolafgift på 1.000 kr. for voksne. Det gælder også, hvis passageren har købt rejsehjemmel via en mobil enhed, der ikke kan kontrolleres, f.eks. hvis denne er løbet tør for strøm eller gået i stykker. Det er passagerens ansvar, at rejsehjemlen er endeligt modtaget på den mobile enhed før påstigning.

I busser, hvor check ind sker om bord, skal check ind ske straks efter påstigning uden unødigt ophold, og inden passageren sætter sig ned.

Som passager uden gyldig rejsehjemmel betragtes også passager, der benytter kort med begrænset tidsgyldighed (f.eks. pensionistkort) uden for kortets gyldighedstid, eller hvis andre rejsebegrænsninger ikke overholdes (f.eks. for hvornår cykler må medtages, eller om der er betalt metro-tillæg). Passagerer, der rejser alene på andres Rejsekort Personligt eller med en anden kundetype, end passageren er berettiget til, rejser uden gyldig rejsehjemmel. Kortindehaveren skal altid selv være checket ind på kortet på de rejser, hvor et Rejsekort Personligt benyttes.

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører følgende:

" I tried to board bus number 36 from Copenhagen Airport to Korsvejens Skole at 10:22 AM on 29-Aug-2023 with my spouse. As it was the first starting point for Bus route, the bus was standing still with no-one inside and even chauffeur was quiet far standing and smoking. Therefore, we boarded the bus as the departure time was near.

As we had luggage and my wife was pregnant, we first got into the bus from front door and kept the luggage. I settled my wife on comfortable seat and immediately rush to show my wife's Dot Travel Pass valid for zone 1,2,3,4 to the chauffeur. Also to do my check-in, I was trying to find my Rejsekort card in my wallet

which I then remember was in my bag and I apologized chauffeur. In the mean time when I was getting my rejsekort to do check-in, the inspector came and asked to showcase the valid ticket. I checked-in my card and explained that bus has to still start the journey as the chauffeur was still out on road and smoking. He ignored all my explanations and started to give me threat that he will call police if I did not share my id with him. Also, he told me and my wife to get off the bus so that the bus can start the journey. After getting off, I shared my CPR ID and he fined me even though he himself acknowledged about our intentions were not to travel without tickets. He also told us that we can write Movia for cancelling the fine by explaining the situation. His id is [udeladt].

I have then written to Movia but they kept the decision to pay me the fine. Therefore, I still kept them explaining my intention not to travel without valid ticket, but they ignored. Therefore, I'm now appealing this to the board to see this and decide what is best.

I would also put my case strong if the bus Video for that time and route can be seen by the board to make the final decision. I know we need to do check-in before we board the bus but the bus engine should be switched on in that case. Sometimes there are situation where you are not able to think and prioritize things specially when you have a pregnant wife."

Og videre:

"I would still like to go ahead and continue the appeal process as they are showing my statements in wrong way. They highlighted my comment about reaching Chauffeur which is true but not fully true as Chauffeur was not in bus but outside smoking with bus not yet started.

I also mentioned specifically that I was settling my pregnant wife on comfortable seat and when I went to him to showcase her DOT pass, I also started searching my travel Rejsekort card which I later found in my bag. Therefore, in the mean time I went back to get that, Inspector entered the bus."

Indklagede anfører følgende:

"Movia maintains that the inspection fee is rightly imposed, and we do so on the grounds that complainant did not present a valid check in on the ticket inspectors' inquiry in the bus.

Using a rejsekort

A rejsekort is used to pay for journeys. To pay as you go, you reload your card with money. After each journey, the cost of that specific journey is deducted from your card account. When your rejsekort is checked in, the card constitutes a legally valid travel document.

Rejsekort must be checked in correctly before the start of the journey. Failure to check in means that the card bearer travels without a legally valid travel document and a fare evasion ticket may therefore be issued.

Joint National Travel Regulations:

2.2. Customer categories

It is the customer's responsibility to have a valid travel document issued for the correct customer category.

2.3. Purchase of travel documents

To be able to travel by train, bus and Metro, the customer must be in possession of a valid travel document.

2.4. Purchase of travel document

Public transport in Denmark is an open system with widespread self-service, and it is therefore always the customer's responsibility to have a valid travel document upon boarding, including by ensuring that the Rejsekort has been checked in correctly.

2.4.3. Use of Rejsekort

Rejsekort, issued by Rejsekort Rejseplanen A/S, can be used as a travel document. A Rejsekort must be checked in before the start of the journey. For all means of transport for which check in takes place inside the means of transport, the customer must check in immediately after boarding, without any unnecessary delay, and before taking a seat.

If the customer does not adhere to the aforementioned check in rules, the customer will be deemed to be without a valid single ticket, which incurs an inspection fee.

2.6. Inspection of travel documents

Throughout the journey, the customer must cooperate with ticket inspection staff. This obligation also applies immediately after the customer has left the bus or train, and until they have left the platform or the Metro area. If the inspection staff consider this necessary, the police may be involved or called in during the inspection

If a valid travel document cannot be presented on request during inspection, it will not be possible to have to get a reduction or cancellation of an inspection fee by subsequent presentation of travel documents.

2.7.1. Inspection of travel documents

Customers who do not, when requested, present valid travel documents, including having checked in correctly on Rejsekort for their travel, must pay an inspection fee.

A valid ticket is thus a passenger's documentation of the right to be transported in public transport. According to the principle of self-service it is the passenger's own responsibility to have a valid ticket from the start of the journey and to be able to present it at the ticket inspector's request.

It is an area with clear and obvious possibilities to circumvent the rules concerning passengers' obligation to pay for the full journey if it is accepted that a passenger can enter the bus and find a seat without first checking in.

Inspection fee

The ticket inspectors observe complainant sitting down when they approach the bus at "Københavns Lufthavn". When they enter the bus complainant get up and perform a check in.

Ny besked	Kunden sidder i bussen da vi stiger på, da han ser os rejser han sig og tjekker ind forrest i bussen. Kunden er på ingen måde samarbejdsvillig og det tager meget lang tid at få kunden til at fremvise ID
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The ticket inspector asks the bus driver who then informs them that complainant presented his wife's ticket and went to sit down.

Ny besked	Cf er forespurgt, cf forklare at kunden kommer ind i bussen og viser kun billet til hans kone, hvorefter de sætter sig i bussen. Og rejser sig hurtigt da vi nærmer os fordøren
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The ticket inspectors take into consideration special circumstances regarding the issuance of fare evasion tickets e.g., luggage, baby strollers etc. In the situation in question complainant is already on the bus, has found a seat and must therefore be able to show a valid ticket. The ticket inspectors do not consider that complainant has taken the necessary steps to be in possession of a valid ticket and issue an inspection fee in accordance with the applicable travel regulations.

Comments and decision

The bus has been at the bus stop and logged on since 10:20:33:

Stoppsted	Stopindikator	Pl. ank.	Pl. afg.	Obs. ank.	Obs. afg.	Obs. køretøj
Københavns Lufthavn (42520)	 	10:25	10:25	10:20:33	10:28:32	-4 3313

The ticket inspectors enter the bus at 10:23:20:

Stop	Københavns Lufthavn
Påstigning	29-08-2023 10:23:20

We can see that complainant checks in at 10:24:30:

Aktivitet	Type	Dato / Tid	Sted
75	Check ind	29-08-2023 10:24:30	Københavns Lufthavn
75	Kontrolmærke	29-08-2023 10:34:38	Københavns Lufthavn
76	Check ud	29-08-2023 10:55:27	Korsvejens Skole

Normalpris		
Betal for : Afstand	1 x Voksen 1 zone	18,00
Total	Alle priser er i kr.	18,00

The bus driver is in the bus which complainant also mentions himself:

“and went to the chauffeur to show my wife's Dot Travel Pass valid for zone 1,2,3,4”

And

“As soon as I entered, I took my wife phone and showed him the Employee Dot Pass for Zone 1-4”

Movia finds the all of the above mentioned supports the ticket inspector's observation and the bus drivers comment.

The customer is obliged to check in immediately when boarding the bus. Complainant checked in after the ticket inspection began and the check in can therefore not be considered valid. If a valid travel document cannot be presented on request during inspection, subsequent presentation will not be accepted.

When an inspection fee is issued, we have no reason to believe that it is anything but a regrettable mistake, but on the other hand, Movia has no way of assessing whether the missing valid check in is due to a mistake, attempt at deliberate cheating, oversight, or other things.

An inspection fee is therefore not conditional on whether a customer have deliberately tried to evade payment or whether there are oversights or misunderstandings, but only if the customer can present a valid ticket during inspection. Since complainant does not make a correct check in immediately after boarding and therefore has not been able to present a valid ticket during ticket inspection, we find that the inspection fee has been correctly issued.”

På ankenævnets vegne



Lone Bach Nielsen
Nævnensformand