

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer:	24-0068
Klageren:	XX 2300 København S
Indklagede:	Movia
CVR-nummer:	29 89 65 69
Klagen vedrører:	Kontrolafgift på 1.000 kr. grundet manglende zone på pendlerkort
Parternes krav:	Klageren ønsker, at ankenævnet annullerer kontrolafgiften, og gør gældende, at han tog den forkerte bus og kom uden for sit pendlerområde, fordi bussen ikke havde noget nummer Indklagede fastholder kontrolafgiften
Ankenævnets sammensætning:	Nævnshoved, 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 17. april 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.

-oOo-

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:

Ifølge klageren, der er engelsktalende, har han et pendlerkort til zonerne 01, 02 og 03, som han benytter, når han kører til og fra sin køreskole, hvor han tager kørekort. Han tager normalt buslinje 18 fra Valby hjem til Kastrup tæt på bopælen, men den 18. januar 2024 kom han til at tage buslinje 4A, der afgår fra samme stoppested ved køreskolen, og kører to yderligere stop på samme rute som buslinje 18, hvorefter busserne skifter retning. Klageren var optaget af at kigge på sin telefon og bemærkede ikke, at bussen kørte i en anden retning end den, han skulle.

Bussen ankom til endestationen, Friheden st., som er 12 stop efter, at buslinjerne skifter retning, da klokken var 19:28:19. Klageren blev om bord, mens bussen holdt stille, og kl. 19:30:02 steg kontrollører ombord og kontrollerede passagerernes rejsehjemmel. Bussen befandt sig på dette tidspunkt i zone 33, som klageren ikke har på sit pendlerkort, og han blev derfor pålagt en kontrolafgift på 1.000 kr. kl. 19:30:56.



Klageren anmodede Movia om at annullere kontrolafgiften og gjorde gældende, at som refereret ovenfor, samt at han har boet i Danmark i 3 år og altid holder sig inden for sit pendlerkorts zoner, når han rejser til og fra arbejde og køreskolen, og rejsen i zone 33 udelukkende beroede på en fejl, da bussen ikke havde noget nummer.

Movia fastholdt kontrolafgiften med henvisning til selvbetjeningsprincippet.

Herefter indbragte klageren sagen for ankenævnet, som har fået forelagt de elektroniske logs af Movia, som det fremgår nedenfor i deres svar.

ANKENÆVNETS BEGRUNDELSE FOR AFGØRELSEN:

Om end det var uheldigt, at klageren kom til at stige ombord på den forkerte buslinje, finder ankenævnet, at han havde en særlig anledning til at sikre sig at være kommet med den korrekte bus,

hvis der, som han gør gældende, ikke var noget nummer på bussen, der holdt ved et stoppested, hvorfra både buslinje 18 og 4A afgår.

Klageren blev ombord på bussen i 12 stop, selv om han havde 7 stop efter Toftegårds Plads til at stige af inden for sit pendlerkorts zone 02, men klageren har oplyst, at han i stedet var optaget af at kigge på sin telefon og ikke bemærkede, at bussen ikke kørte i den retning, han skulle.

Som følge af det anførte finder ankenævnet, at kontrolafgiften til klageren blev pålagt med rette og at der ikke har foreligget sådanne særlige omstændigheder, der gør, 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 rejsebegrensninger 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 was going home after completing my driving school in Valby [gade udeladt], mistakenly I got In a wrong bus and went outside of my zone because the bus did not have any bus number in it and I thought this is my bus. I usually take number 18 bus from Valby Langgade to [udeladt] which is next to my home. Instead of taking number 18 bus I got in Bus 4A which go from the same station but in the bus was not written any number. I was also on my phone and not paying attention to the route.

I got fined as the wrong bus went into the wrong zone. I always use Pendlerkort. I work location is in [udeladt] 2450. My work location, home location and my driving school location is under my Commuter card zone. So I never need to go outside the zone. I buy it every month Pamdlekort .I have attached My Pendlerkort and the pictures of yellow card

you can see I have my zone from my home to driving school in Valby.

I have been living in Denmark for more than 3 years and never broken any law and never use public transportation without any tickets because I always follow rules and regulations. Please have a look my honest mistake that I am not aware of. I have attached the fine receipt also. I am really sorry. I am totally unaware about this. Please forgive me and consider my fine.

My mistake was not intentional and I never traveled without any tickets in Denmark. I always follow the rules. It would be nice for me if i am given a chance. I have no complaints on the traffic company because they did the right thing as I was out of my zone. I want add one thing here is that When I saw the inspectors who are checking the tickets I had a chance to leave the bus because there was a bus stop and the door was open. I knew that I have valid commuter card but I didn't knew I was outside the zone because of the selection of wrong bus."

Indklagede anfører følgende:

" Movia hereby responds to the complaint regarding inspection fee 24[xxx]issued in the bus 4A on the 18.01.2024. We enclose previous correspondence with the customer, as well as attachments.

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

On the day in question [the complainant] did not present a valid ticket since his commuter pass did not have the necessary zone 33 included in which he travelled when meeting the inspector. The inspection took place in zone 33, where [the complainant] presented a commuter pass with only zone 1, 2 and 3 represented.

If you travel outside the zones on your commuter pass, you must order a ticket before the bus is leaving the zones on your commuter pass. If you board the bus in another zone, you must purchase an extension ticket before commencing your journey.

Movia also refers to the Joint National Travel Regulations § 2.4, where it says that the Danish Travel System is based on self-service exclusively. That means that a customer is responsible for carrying a valid ticket and the customer can present it during the whole travel. A traveler must ensure that the ticket is in accordance with requirements; hereby ensure that the commuter pass has the necessary zones to the travel. In this case, it means that [the complainant] is responsible himself for ensure that the of zones on his commuter pass is sufficient to his travel.

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.

The customer can extend the journey by purchasing more zones/a new single ticket for the ordinary travel document. The purchase must be made while the ordinary travel document is still valid. The rules for purchase and use of a supplementary single ticket/new single ticket adhere to the general rules for purchase of travel documents. In DOT, the customer can extend the journey by purchasing a one-zone additional single ticket for a Commuter Pass. If the customer is to travel further than one zone, or if the customer is using another travel document, the journey may be extended by purchasing a new single ticket.

2.6. Inspection of travel documents

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.

Inspection fee

On the day in question the inspection team boarded the bus at Friheden St. in zone 33 at 19:30:02. The fine was issued at 19:30:56.

Stop	friheden st
Påstigning	18-01-2024 19:30:02
Udstedt dato/tid	18-01-2024 19:30:56
Stået af	18-01-2024 19:33:33

According to the tour overview of the bus, the inspector boarded at the first stop of the departure of the bus. From the previous tour, it arrived at 19:28:19. Therefore, the bus was stopping at Friheden between at 19:28:19 from the previous tour until the next departure at 19:31:56.

#	Stoppested	Stopindikator	Pl. ank.	Pl. afg.	Obs. ank.	Obs. afg.
1	Friheden St. (10202)	● ●	19:29	19:29	19:28:19	19:31:56
2	Strandmarksvej (5084)	● ●	19:30	19:30	19:34:09	19:34:09
3	Michael Berings Vang (5085)	● ●	19:31	19:31	19:34:59	19:35:06

Since [the complainant] did not have the zone 33 included on his commuter pass or could not present a supplementary ticket, an inspection fee was issued due to lacking zone 33; "Pendlerkort mangler zone".

Årsag	Pendlerkort mangler zone
Bemærkning	Mangler zone 33

As shown below, the bus starts in zone 33 from Friheden St.

4A Friheden St.- Buddinge St.

Rute	Zone	Stoppesteder
Friheden St. Gammel Køge Landevej	33	Friheden St. Strandmarksvej Michael Berings Vang Hvidovregårds Allé Åmarken St. Vigerslevvej

[The complainant] presented during the ticket inspection a commuter pass valid for the zones 1, 2 and 3.

Comments and decision

Based on the complaint by [the complainant], he should have boarded the bus at Valby Langgade in Valby and was on his way home, but mistakenly got in the wrong bus.

"I was going home after completing my driving school in Valby, mistakenly I got in a wrong bus and went outside of my zone..."

Buslinje: 4A

Hvor steg du på bussen?: Valby Langgade

Hvor steg du af bussen?: Friheden station

[the complainant] claims that he usually drives with bus 18 to the stop Wibrandtsvej (Kastrupvej).

"I usually take number 18 bus from Valby Langgade to Wibrandtsvej (Kastrupvej) which is next to my home."

As shown on the next picture, we have compared the two routes line 18 and 4A. Marked with yellow are on the line 18 the claimed start stop and the planned end stop. On line 4A, likewise, we see the start stop and the actual end stop based on the inspection fee.

The orange marking illustrates the last stop both buses stop before changing route. As shown, line 18 drives left at the intersection at Toftegårds Plads through Sjælør St., while 4A continues straight out at the intersection through the south of Valby.

For line 4A, it is therefore already after the third stop that the route changes for what [the complainant] is apparently used to.

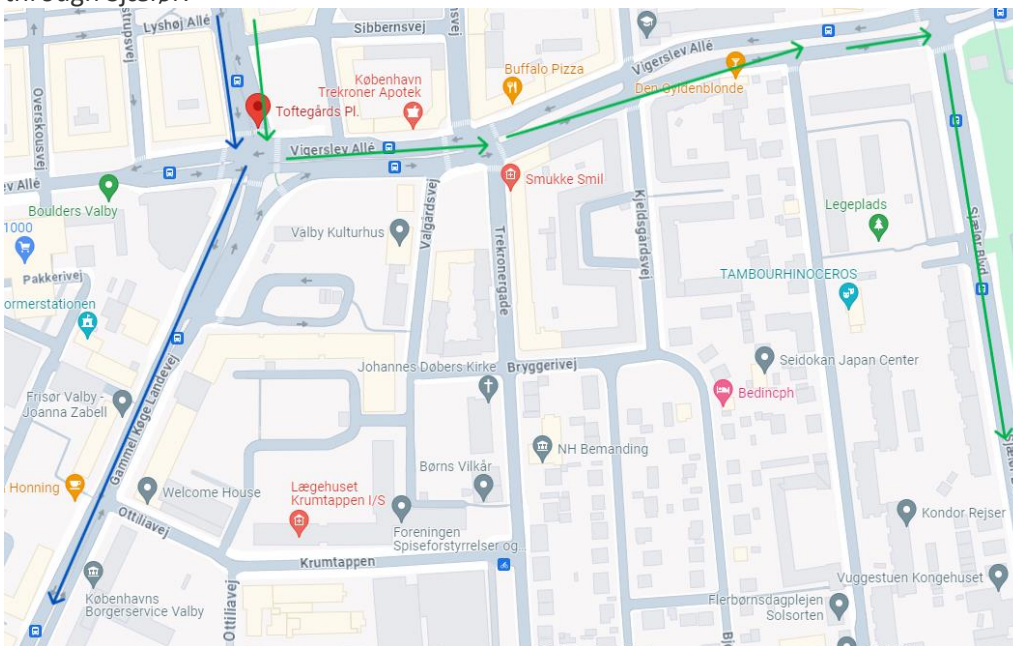
18 Emdrup Torv - Lergravsparken St.

Rute	Zone	Stoppesteder		
Emdrupvej	2	Emdrup Torv		
		Emdrup Torv		
		Skovstjernevej		
		Banebrinken		
		Emdrup Søpark		
		Emdrup St.		
		Gribskovvej, Bispebjerg Hospi		
		Stredanvej		
		Haraldsgade		
		Aldersrogade		
Jagtvej	2	Universitetsparken		
		Tagensvej		
		Steungsgade		
		Nørrebro Runddel St.		
		Jægersborggade		
		Nuuk's Plads St.		
		Ågade		
		Røtlighedsvej		
		Hetgesvej		
		Frederiksberg St.		
Falkoner Allé	2	Frederiksberg Rådhus		
		Frederiksberg Runddel		
		De Små Haver		
		Kammasvej		
		Bjerrgårdsvvej		
		Gl. Jernbanevej		
		Valby Langgade		
		Valby St., broen		
		Valby St., Lyshøjgårdsvvej		
		Valby St., Lyshøjgårdsvvej		
Allegade Pile Allé	2	Toftegårds Plads		
		Vigerslev Allé		
		Sankt Annæ Gymnasium		
		Sjælør St.		
		Ellebjergvej		
		Mozarts Plads		
		Anker Jørgensens Plads		
		Bådehavnsgade		
		Sluseholmen		
		Ved Slusen		
Borgm. Christiansens Gade	2	Artillerivej		
		Bella Center, Indgang Vest		
		Bella Center St.		
		Ørestad St., Kay Fiskers Plads		
		Digevej		
		Røde Mellemvej		
		Englandsvej		
		Irlandsvej		
		Vejlands Allé		
		Sundbyvester Plads		
Borgbjergsvej Sjællandsbroen	2	Wilbrandtsvej		
		Persiensvej		
		Amager Hospital		
		Sundby Kirkegård		
		Lergravsparken St., Sløjfen		
		Vejlands Allé Center Østvej	3	
Ørestad St. Vejlands Allé	3			
Amagerbrogade	3			
Kastrupvej	3			
Østrigsgade	3			

4A Buddinge St. - Friheden St

Rute	Zone	Stoppesteder
Buddingevej Gladsaxe Ringvej Gladsaxevej	31	Buddinge St.
		Buddinge Torv
		Gladsaxe Ringvej
		Vandtårnsvej
		Gyngemosevej
		Isbanevej
		Høje Gladsaxe
		Dølen
		Mars Allé
		Lauggårds Allé
Frederiksborgvej Emdrupvej Frederiksborgvej	31	Engkrogen
		Gladsaxevej
		Emdrup Torv
		Emdrup Torv
		Bispebjerg Parkalle
		Bispebjerg Torv
		Tagensvej
		Tuborgvej
		Tuborgvej
		Frederiksborgvej
Tagensvej Tuborgvej Frederiksborgvej	2	Landsdommervej
		Bispevej
		Frederikssundsvej
		Nørrebro St.
		Hillerødgade
		Hillerødgade
		Borups Allé
		Mariendalsvej
		Godthåbsvej
		Nyelandsvej, Frederiksberg Hospital
Folmer Bendtsens Plads Lundtoftegade Nordre Fasanvej	2	Fasanvej St.
		Peter Bangs Vej
		Mathildevej
		Roskildevej, Zoologisk Have
		Aurikelvej
		Valby Langgade
		Valby St., broen
		Toftegårds Plads
		Kirsten Walthers Vej
		Carl Jacobsens Vej
København Syd St., Grenttorvet		
Søndre Fasanvej	2	Folehaven
		Blommehaven
		Gl. Køge Landev. Kollegiet
		Vigerslevvej
		Åmarken St.
		Hvidovregårds Allé
		Michael Berings Vang
		Strandmarksvej
		Friheden St.
		Friheden St.
Toftegårds Allé Gammel Køge Landevej	33	

The blue arrow below shows the route of 4A after Toftegårds Plads, while the green shows the route of 18 through Sjælør.



If being used to drive with 18 from Valby to Wibrandtsvej, we find it strange that [the complainant] did not realize before Friheden St. that he did not drive with the right bus.

Friheden St. is located no more than 12 stops after Toftegårds Plads, where the bus drove straight out instead of turning left as [the complainant] must have been used to.

Furthermore, we do not understand why [the complainant] in the first place could have boarded the wrong bus, when A-buses are red in the corners and therefore different from ordinary buses. Furthermore, at the bus stop, the A-buses are written with red background while ordinary with yellow.



No matter what, in this case we focus on the fact that the inspection fee was issued in zone 33 at Friheden St. far away from Valby Langgade.

Regardless of whether it is the right bus or the wrong, it is the customers own responsibility to ensure that a ticket is in accordance with requirements.

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 Side Rejsekort has been checked in correctly. On receipt of a travel document, the customer must make sure that the single ticket is in accordance with requirements.

A commuter pass is a useful product for passengers that travel often on the same route on daily or weekly basis. The price is lower than it would have been if the customer was about to pay for every single ticket for every single journey. On the contrary, the conditions of the pass must be complied with. Among others, it is important that the customer is concerned about which zones are legal.

If you travel outside the zones on your Commuter Pass, you must order a ticket before the bus is leaving the zones in your Commuter Pass. If you board the bus in another zone like the, you must purchase a supplementary ticket before commencing your journey.

When you travel on tickets or commuter passes with an insufficient number of zones, you will be able to travel in more zones than the intended zones, you have paid for. It is your own responsibility to have a valid ticket for the entire journey.

Movia does not take into consideration, whether the lack of a valid ticket is caused by intentional fraud, overlooking/forgetfulness or otherwise. An inspection fee is issued, when a customer cannot present a valid ticket at the ticket inspection.

Movias conclusion

On the day in question [the complainant] could not present a valid ticket for the zone 33, in which he travelled.

It is always possible for customers to be orientated in the zone system at the bus stop, on Rejseplanen.dk or on the display inside the bus.

Movia maintains the inspection fee since [the complainant] could not present a valid ticket. In situations where valid tickets cannot be presented upon request, it is expected to pay a fine. This basic rule is a prerequisite for the self-service transport system, which takes place in the Capital area.

It would lead to increased opportunities for fraud if passengers could travel in other zones than the ones on the commuter passes without receiving a fine. In other words, it is an area with a high risk of circumvent the obligation for payment of the journey if it is accepted that a ticket without the necessary zones is accepted and does not lead to an inspection fee.

We do not find complainant has complied with his duty to ensure a valid ticket on the journey and we maintain the inspection fee.

Based on the circumstances and the complaint from [the complainant], Movia does not find that we can take the responsibility for the invalid ticket and commuter pass presented on the day in question. As a customer in the public transport, you must always ensure before boarding that the ticket is in accordance with the requirements.

We believe that special attention must be paid to:

1. The bus arrives at Friheden St. from the previous tour at 19:28:19, but [the complainant] stayed in the bus if his information about boarding is to fit. (Fine was issued at 19:30:56 – Bus departed at 19:31:56).
2. In isolation, there is a big difference between a line 18 and 4A based on the appearance and on the bus stop.
3. The two lines run very different routes, and they are already separated at Toftegårds Plads after 3 stops. In other words, it should be easy for a commuter to see if it is the usual route or another.”

På ankenævnets vegne



Lone Bach Nielsen
Nævningsformand