

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2019-0222
- Klageren:** XX
3520 Farum
- Indklagede:** Movia
CVR-nummer: 29 89 65 69
- Klagen vedrører:** Kontrolafgift på 750 kr. grundet manglende straks-check ind
- Parternes krav:** Klageren ønsker, at ankenævnet annullerer kontrolafgiften og gør gældende, at han tog fejl af sine omslag, hvor han opbevarer sit udløbne periodekort og sit rejsekort
- Indklagede fastholder kontrolafgiften
- Ankenævnets sammensætning:** Nævnensformand, landsdommer Tine Vuust
Rasmus Markussen
Torben Steenberg
Asra Stinus
Helle Berg Johansen

Ankenævnet for Bus, Tog og Metro har på sit møde den 19. februar 2020 truffet følgende

AFGØRELSE:

Movia er berettiget til at opretholde kravet om betaling af kontrolafgiften på 750 kr.

Beløbet skal betales til Movia, som 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 forsikringselskab om eventuel forsikringsretshjælp.

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SAGENS OMSTÆNDIGHEDER:

Klageren rejste den 19. september 2019 med bus nr. 101A fra Lidl Centrallager. Ifølge bussens GPS forlod den stoppestedet kl. 15:14:45.

Klageren har gjort gældende, havde han sit rejsekort i ét plasticomslag og sit udløbne periodekort fra 2015 i et andet plasticomslag. Da han skulle checke ind ved ombordstigning, opdagede han, at standen ikke gav nogen lyd, og han fandt ud af, at han havde taget fejl af de to omslag. Han checkede derfor sit rejsekort ind straks efter.

Check ind på klagerens rejsekort er registreret kl. 15:14:56 på Lidl Centrallager.

Ifølge Movias kontrollører og de tekniske logs, steg de på bussen kl. 15:06:54 på Køge Nord st., hvorefter de kl. 15:49:46 udstedte en kontrolafgift til klageren for at mangle billet. Det fremgår, at kontrollen tog 33 minutter og 47 sekunder, og at politiet blev tilkaldt til identifikation af klageren, som ikke ville vise ID.

På den elektroniske kontrolafgift noterede kontrolløren, at de var ombord i bussen, da klageren steg på og viste et kort til chaufføren, men da han fik øje på kontrollørerne, løb han tilbage og checkede sit rejsekort ind.

Kontrollørerne inddrog det udløbne periodekort fra 2015, som nu befinder sig i Movias varetægt.

Den 25. september 2019 anmodede klageren Movia om at annullere kontrolafgiften og gjorde gældende som gengivet ovenfor. Han anførte endvidere, at kontrolløren checkede hans rejsekort ud, da de kom til Ølby st., hvilket klageren ikke havde kunnet få nogen fornuftig forklaring på. Han anførte videre, at Movia skulle se kameraovervågning fra bussen, som ville vise, at han talte sandt.

Movia fastholdt kontrolafgiften på baggrund af kontrollørernes observationer og det forhold, at klageren rejste rundt med et 4 år gammelt periodekort, som indikerede, at han havde overtrådt reglerne om at foretage straks-check ind.

Klageren anmodede endnu engang Movia om at gennemse videooptagelse fra bussen.

Der er under den efterfølgende ankenævns sag fremlagt foto af de to plasticomslag:

Black cover:



Dark blue cover in a different shape:



ANKENÆVNETS BEGRUNDELSE:

Efter en samlet bedømmelse af sagens omstændigheder herunder kontrollørens notat på kontrolafgiften om, at klageren først checkede ind, efter at han havde fået øje på kontrollørerne, lægger ankenævnet til grund, at klageren ved ombordstigning foreviste sit 4 år gamle periodekort til chaufføren, der ifølge Movia alene foretager vilkårlige kontroller af rejsehjemmelen, og som derfor ikke opdagede, at kortet for længst var udløbet.

Ankenævnet bemærker, at klageren selv må bære ansvaret for at forveksle de to kort, som i øvrigt hverken har samme farve eller form, og hvor det ene desuden ikke kan anvendes til rejse med kollektiv transport, da det udløb i 2015.

Det er således klagerens egen risiko, at han overtrådte rejsereglerne om at skulle checke ind straks efter ombordstigning.

Check ind skete ifølge de tekniske logs 11 sekunder efter, at bussen havde forladt stoppestedet, hvilket under de foreliggende omstændigheder ikke kan betegnes som "straks-check ind" i medfør af rejsereglerne om check ind i busser.

På den baggrund blev kontrolafgiften pålagt med rette, og der har ikke foreligget sådanne særlige omstændigheder, at kontrolafgiften skal frafaldes.

Klagerens anmodning om at videooptagelserne fremskaffes, kan ikke imødekommes.

RETSGRUNDLAG:

Af § 14 stk. 1 i lov om ændring af lov om trafikkselskaber og jernbaneloven, fremgår jernbanevirksomhedernes adgang til at opkræve kontrolafgift og ekspeditionsgebyr for passagerer, der ikke foreviser gyldig rejsehjemmel (billetter og kort).

I de fælles landsdækkende rejseregler, som trafikvirksomhederne har vedtaget, præciseres hjemmelen til at udstede 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 750 kr. for voksne.

2.4.2. Use of rejsekort

On city buses in Aarhus, there is free entry and exit through all doors, and check-in and check-out stands are located at all doors. On the Lemvigbanen, check-in/check-out stands are located at one end of the train. This is marked on the outside of the train. For all means of transport where Check-In is carried out within the means of transport, the customer must Check In immediately after boarding.

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører følgende:

"coming from work on Thursday 19th September 2019 around 15:00. I took a bus 101A from Lidl Cetrallager, Nordhøj going towards Ølby station. I had my expired (2015) ticket with me inside a Blue pouch and my rejsekort too Which is inside a seperate Blue pouch in my bag. When I entered the bus, I mistakenly took the expired ticket and touch But when I could not hear the check in sound, I knew immediately that i took the wrong pouch and dropped my bag and searched for the pouch with my rejsekort then I checked in. When I was about to sit down, I just saw two of the controllers coming towards me from the back of the bus and collected the two pouches from me (the one with my expired 2015 ticket & the other with my rejsekort). One of the controllers asked me Why did I show the driver the expired ticket. I told him that I did not show him any ticket, that I tried to check in and did not hear any sound then I had to search for the pouch with my rejsek-

ort then I checked in. He used the machine in his hand to check whether I check in or not, then he confirmed that I checked in. He now said that I tried to deceive the driver by showing him my expired ticket. I told him I did not show the driver the expired ticket. He asked for my ID and I told him that I won't give him because I actually checked in with my rejsekort. I told him to call the police in order to settle the issue. His unprofessional behaviour really harrassed, traumatised and embarrassed me. All these happened between 15:15 when I came into the bus and 15:20. When the bus now got to Ølby Station, the controller now checked me out at exactly 15:29. I asked him Why he checked me out, he said for my Security. I asked him How? But he could not tell me anything I understand. Please I would appreciate if you can check the front (the one close to the driver) CCTV Camera in the bus at the times I gave above to confirm all my claims.

The police came and asked for my ID. I gave it to them and the explained to me that I can write and asked for the ticket to be cancelled. Why should a controller give me fine when I actually checked in with my rejsekort. I really can't understand this.

Please find enclosed pictures of my expired 2015 ticket, my rejsekort and the fine for your thorough investigation.

Please I want you to investigate this thoroughly (By checking CCTV CAMERA ON THE BUS, THE ONE CLOSE TO THE MAIN ENTRANCE OF THE BUS) and do fairness and justice to it."

Indklagede anfører følgende:

"

Movia maintains that the fare evasion ticket issued 19.09.2019 is rightly imposed and we do so on the grounds that complainant did not present a valid ticket on the ticket inspectors inquiry during the ticket inspection.

Commuter passes and rejsekort

A Commuter Pass is a product with a fixed priced valid for 30-60 days. The Commuter Pass is a valid travel document for unlimited travel for the period and in the zones printed on the Commuter Pass. It is the customers own responsibility to ensure that the Commuter Pass is correctly issued and are valid for the entire journey and the area to be travelled in.

A rejsekort is used to pay for journeys. To pay as you go, you reload the rejsekort with money. After each journey, the cost of that specific journey is deducted from the rejsekort account. When the rejsekort is checked in, the card constitutes a legally valid travel document. A rejsekort must be checked in at the start of the journey or when a change between different means of transport occurs. For all means of transport where a check in is carried out within the means of transport, the customer must check in immediately after boarding. 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 (*Rejsekort Terms and Conditions 1.1. and 1.3. Appx. 1*). For all means of transport where a check in is carried out within the means of transport, the customer must check in immediately after boarding (*Appx. 3. Joint National Travel Regulations Section 2.4.2.*)

Background for fare evasion ticket 492202

The ticket inspectors are already in the bus when the bus arrives at bus stop “Nordhøj, Lidl Centrallager” at 15:14:23. The ticket inspectors observe complainant embarking the bus whilst showing a Commuter Pass to the bus driver. The ticket inspectors also observe that when complainant notices the ticket inspectors he immediately turns around and runs to the rejsekort reader and checks in a rejsekort (Fare evasion Ticket Appx. 2).

During the following ticket inspection complainant show a Commuter Pass valid 23.08.2015-21.09.2015 and a rejsekort. Customers who do not, when requested, present valid travel documents, including having correctly checked in on rejsekort for their travel, will be issued a fare evasion ticket.

During the ticket inspection complainant refused to identify himself and the ticket inspector had to call the police to assist in the implementation of ticket inspection. The Commuter Pass was confiscated because of suspected abuse.

Comments and decision

According to Rejsekort A/S complainant check in at 15:14:56:

Køretøjsnummer: 4407

Rejsekorthistorik

Rejsenr.	Dato	Kl.	Fra	Kl.	Til	Beløb kr.	Saldo kr.	
+	18-09-2019	15:18	Tank-op		Farum St.	100,00	170,30	
+	148	19-09-2019	06:04	Linje : 300S Glostrup St.	07:14	Linje : 101A Nordhøj, Lidl Centrallager	-30,40	139,90
-	149	19-09-2019	15:14	Linje : 101A Nordhøj, Lidl Centrallager	15:28	Linje : 101A Køge Sygehus	-16,00	123,90

Aktivitet	Type	Dato / Kl.	Sted
604	Check ind	19-09-2019 15:14:56	Nordhøj, Lidl Centrallager
604	Kontrolmærke	19-09-2019 15:15:06	Ølby St.
605	Check ud	19-09-2019 15:28:56	Køge Sygehus

Normalpris

Betal for : Afstand	1 x Voksen	16,00
	2 zoner	

Total	Alle priser er i kr.	16,00
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Takstsæt	Hovedstadsområdet	Rejsens længde	2 zoner
Betalingsmåde	E-pung	Ændring af rejse	Ingen
Forudbetaling	25,00	Serviceniveau	Standard
Forudbetalingsniveau	Lavt - rejser mellem landsdele tilladt	Fjerneste punkt på rejse	Køge Sygehus
Rabattæller i brug	Øst for Storebælt, Trin : 1	Passager(er)	1 x Voksen
Rabatpoint optjent	10	Kontrol	Ja

The bus departs bus stop "Lidl Centrallager" at 15:14:45 according to the GPS located in the bus:

#	Stoppested	Stopindikator	Pl. ank.	Pl. afg.	Obs. ank.	Obs. afg.	Obs. køretøj	Dist. (Km)	Hastighed (Km/t)	Check In	Check Out
1	Køge Nord St. (52948)	●	15:08	15:08	15:03:00	15:08:07	4407	0,0		0	0
2	Nordhøj Lidl Centrallager (50856)	●	15:15	15:15	15:14:23	15:14:45	4407	3,8	36	3	0
3	Nordhøj Netto Centrallager (50591)	●	15:17	15:17	15:18:46	15:17:04	4407	4,9	34	2	0
4	Centervej (52092)	●	15:18	15:18	15:18:30	15:18:40	4407	5,6	30	1	0

Movia finds that this information confirms the ticket inspectors observation - that complainant entered the bus only to turn around and check in when noticing the ticket inspectors after the bus had departed the bus stop.

Movia do not find any reason for complainant not to make a correct check in immediately when entering the bus. According to complainant he mistakenly took the expired Commuter Pass instead of his rejsekort. The colour and shape, however, of these covers are not identical:

When a fare evasion ticket is issued, we have no reason to believe that this is anything but a regrettable mistake, but on the other hand, Movia has no way of assessing why carrying around a Commuter Pass expired 4 years earlier is due to a mistake, attempt at deliberate cheating, oversight or other things. Therefore, we do not relate to it. A fare evasion ticket is not conditional on whether complainant deliberately tried to evade payment or whether there are errors or misunderstandings, but only if complainant can present a valid ticket in the control situation. In this case we find no reason for complainant not to have his rejsekort ready when embarking the bus and does not believe that complainant in this case has done what it takes to be able to show a valid ticket.

The driver does not perform a systematic ticket inspection but only does random checks (*Joint National Travel Regulations Section 2.4. Appx. 3*).

Because of the ticket inspectors observation (*Fare evasion ticket. Appx. 2*) and the fact that the bus was en route when the customer checked in at 15:14:56 (*Appx. 4. GPS and Rejsekort*), Movia finds no reason not to treat complainant the same way as any other customer who is not able to show a valid ticket. Movia finds that the fare evasion ticket has been correctly issued and maintains the fare evasion ticket.

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På ankenævnets vegne



Tine Vuust
Nævnensformand