

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer:	23-0357
Klageren:	XX 2200 København N
Indklagede:	Movia
CVR-nummer:	29 89 65 69
Klagen vedrører:	Kontrolafgift på 1.000 kr. grundet modtagelse af mobilbillet efter påstigning
Parternes krav:	Klageren ønsker, at ankenævnet annullerer kontrolafgiften, og gør gældende, at hun købte billetten lige før, hun gik ind i bussen Indklagede fastholder kontrolafgiften
Ankenævnets sammensætning:	Nævnshoved, dommer Lone Bach Nielsen Rolf Høymann Olsen 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:

Klageren steg den 29. september 2023 på Movias buslinje 7A ved stoppestedet Bådehavnsgade. Bussen ankom til stoppestedet kl. 18:46:13 og afgik igen kl. 18:46:28.

Uddrag fra bussens GPS-log:

#	Stoppested	Stopindikator	Pl. ank.	Pl. afg.	Obs. ank.	Obs. afg.
1	Sjælør St. (54651)	● ●	18:37	18:37	18:36:31	18:37:08
2	Sjælør St. (1188)	● ●	18:37	18:37	18:38:21	18:39:31
3	Mozarts Plads (52817)	● ●	18:41	18:41	18:41:21	18:41:58
4	Via (52819)	● ●	18:41	18:41	18:42:41	18:42:41
5	Anker Jørgensens Plads (1544)	● ●	18:42	18:42	18:43:28	18:43:45
6	Via (52827)	● ●	18:43	18:43	18:44:38	18:44:38
7	Bådehavnsgade (1192)	● ●	18:45	18:45	18:46:13	18:46:28
8	Ernie Wilkins Vej (47749)	● ●	18:47	18:47	18:48:23	18:48:38
9	Alliancevej (47751)	● ●	18:49	18:49	18:49:42	18:50:10

Ombord befandt sig allerede kontrollører, som var steget på bussen to stop tidligere ved stoppestedet Mozarts Plads. Ved den efterfølgende kontrol af klagerens rejsehjemmel foreviste hun en mobilbillet, som hun havde bestilt kl. 18:46:32 – efter bussens afgang fra stoppestedet – og modtaget på sin mobiltelefon kl. 18:46:44, hvilket var 16 sekunder efter, at bussen afgik fra stoppestedet. Herefter blev klageren pålagt en kontrolafgift på 1.000 kr.

Uddrag af den elektroniske kontrolafgift med kontrollørens årsangivelse og bemærkninger:

Årsag	Mobilbillet købt efter påstigning
Bemærkning	Kunden står på ved bådehavnsgade. Går forbi xhauffør og sætter sig ned. Går igang med at bestille umiddelbart efter hun ser i min retning. Fortæller huk løb efter bussen, men stod helt stille v stoppestedet da bussen ankom.

Uddrag af loggen for klagerens mobilbilletkøb:

Billethistorik		
Status	Handling	Tidspunkt
● Gennemført	Ordre modtaget	29 Sep 2023 - 18:46:32
● Gennemført	Betaling gennemført	29 Sep 2023 - 18:46:44

Den 1. oktober 2023 anmodede klageren Movia om at frafalde kontrolafgiften med den begrundelse, at hun havde løbet for at nå bussen, og at hun påbegyndte billetkøbet før, hun steg ombord.

Movia fastholdt kontrolafgiften den 10. november 2023 og anførte bl.a.:

" You have stated that you boarded the bus at Bådehavns­gade. This has also been noted by the ticket inspector.

The bus departed bus stop Bådehavns­gade at 18:46:28 and your ticket was not received until 18:46:44.

The rules regarding purchase of mobile tickets are very clear. Your mobile ticket needs to be received prior to entering the bus, according to the Joint National Travel Regulations. It is your own responsibility to have a valid ticket for the entire journey and to be able to show upon request"

ANKENÆVNETS BEGRUNDELSE FOR AFGØRELSEN:

På baggrund af de tekniske logs i sagen lægger ankenævnet til grund, at klageren var steget ombord på bussen, da hun modtog mobilbilletten på sin mobiltelefon.

Ifølge de fælles landsdækkende rejseregler skal mobilbilletter være modtaget på mobiltelefonen inden påstigning, og det er i denne forbindelse uden betydning, om billetten på tidspunktet for en efterfølgende kontrol kan fremvises på telefonen.

Klageren havde derfor i relation til rejsereglerne ikke gyldig rejsehjemmel ved kontrollen, hvor hun foreviste en mobilbillet, som hun ikke havde modtaget på mobiltelefonen, inden hun steg ombord på bussen.

Kontrolafgiften blev dermed pålagt klageren med rette.

Det bemærkes, at dette er et område med oplagt mulighed for omgåelse af reglerne om, at passageren skal have gyldig rejsehjemmel fra rejsens begyndelse, hvis det accepteres, at mobilbilletter kan bestilles og modtages efter påstigning.

Herefter finder ankenævnet, at der ikke har foreligget sådanne særlige omstændigheder, at klageren kan fritages for betaling af kontrolafgiften.

RETSGRUNDLAG:

Ifølge lov om trafik­selskaber § 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 would like to complain about the fine I received for traveling without a ticket. I purchased my ticket seconds before I boarded on 7A bus from Bådehavnsvej bus station. The ticket inspector asked me for my ticket, I took my phone to show the ticket, and while the app was loading the inspector assumed that I was just buying it. However, that is not true, I had it purchased just before entering the bus.

I complained to Movia about the matter, but they declined my complaint, stating that the bus departed at 18:46:28 while I received my ticket at 18:46:44, which, technically, results in time difference of 16 seconds. I believe both the GPS of the bus and the DOT app have a specific time accuracy buffer –to account for minor discrepancies due to errors, signal loss, and other factors. Consequently, I find it unreasonable to be fined for not possessing a ticket prior to boarding based on a 16-second discrepancy. I kindly request access to the logged time indicating when I initiated the ticket purchase process for further clarification."

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 ticket on the inspectors' inquiry in the bus.

On the day in question XX did not present a valid ticket since her purchase on the mobile device was not completed until after her boarding on the bus. When she boarded the bus, the inspector was placed inside the bus. He noticed that she passed the driver and started ordering the mobile ticket afterwards.

Movia refers to the Joint National Travel Regulations § 2.4.2. It is the customer's own responsibility to ensure that the travel document has been received on the mobile device before boarding. It is not sufficient that the order has commenced. In this case it means that XX is responsible herself for ensure that the ticket is received before entering the bus.

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 a mobile ticket fits with the customer type and the valid time.

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.

2.4.2. In particular concerning use of mobile products (delivered via text message or app)

It is the customer's responsibility to ensure that the travel document has been received on the mobile device before boarding. It is not sufficient that the order has commenced.

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 Mozarts Plads at 18:41:26. The inspectors noticed that XX boarded the bus at the stop Bådehavnsgade where the bus was stopping from 18:46:13 to 18:46:28. According to her own complaint, she agrees to have started her journey at Bådehavnsgade.

Hvor steg du på bussen?: Bådehavnsgade

Hvor steg du af bussen?: Hovenbanegården, Tivoli

The inspection fee is issued at 18:49:46.

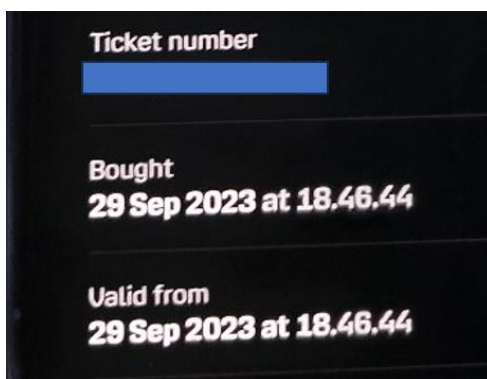
Stop	Mozarts Plads
Tur ID	0
Påstigning	29-09-2023 18:41:26
Udstedt dato/tid	29-09-2023 18:49:46
Stået af	29-09-2023 19:06:16

The reason for the fee is called "Mobile ticket received after boarding" – "Mobilbillet købt efter påstigning". On the GPS of the bus, we see that the bus departed from Bådehavnsgade at 18:46:28.

Årsag	Mobilbillet købt efter påstigning
-------	-----------------------------------

#	Stoppested	Stopindikator	Pl. ank.	Pl. afg.	Obs. ank.	Obs. afg.
1	Sjælør St. (54651)	● ●	18:37	18:37	18:36:31	18:37:08
2	Sjælør St. (1188)	● ●	18:37	18:37	18:38:21	18:39:31
3	Mozarts Plads (52817)	● ●	18:41	18:41	18:41:21	18:41:58
4	Via (52819)	● ●	18:41	18:41	18:42:41	18:42:41
5	Anker Jørgensens Plads (1544)	● ●	18:42	18:42	18:43:28	18:43:45
6	Via (52827)	● ●	18:43	18:43	18:44:38	18:44:38
7	Bådehavns­gade (1192)	● ●	18:45	18:45	18:46:13	18:46:28
8	Ernie Wilkins Vej (47749)	● ●	18:47	18:47	18:48:23	18:48:38
9	Alliancevej (47751)	● ●	18:49	18:49	18:49:42	18:50:10

On the ticket that XX presented during the ticket inspection we see that her ticket was not valid before at 18:46:44. That was 16 seconds after the bus had left Bådehavns­gade according to the GPS.



When analyzing the concrete process of the order, we see that also the initiation of the ticket was made after the bus had left the stop. The whole process of the purchase began at 18:46:32, which was 4 seconds after the bus had left the stop.

Billethistorik		
Status	Handling	Tidspunkt
● Gennemført	Ordre modtaget	29 Sep 2023 - 18:46:32
● Gennemført	Betaling gennemført	29 Sep 2023 - 18:46:44

We therefore think that the data supports the note that the inspector made shortly after.

Bemærkning
Kunden står på ved bådehavns­gade. Går forbi xhauffør og sætter sig ned. Går igang med at bestille umiddelbart efter hun ser I min retning. Fortæller huk løb efter bussen, men stod helt stille v stoppestedet da bussen ankom.

In the note of the inspector, it says that XX boarded the bus at Bådehavns­gade, then passed the driver and then took a seat. After this she should have started the purchase of her ticket when noticing the inspector. She should have told the inspector that she was running when reaching the bus, but the inspector has noticed her standing still at the bus stop.

We believe that this note corresponds to the fact that her purchase of the ticket was not started before the bus had departed the bus stop.

It is very clear for any customer to know when a ticket is received. If there are any problems when purchasing the ticket, there will be either an error message or an image of the screen trying to connect. In most error messages a warning appears not to start the journey until the purchase has been completed.

Technical malfunctions can be caused by several factors like bad reception, the ticket app not being updated, payment card issues, problems with MobilePay, wrong entry etc.

Alle of these issues are out of the Movia's influence and we cannot take the responsibility for any payment or connection problem the customer might have had.

For all cases, the rule about receiving the mobile ticket before boarding is extremely important, as it would negatively affect the cheating rate if passengers were allowed to receive the ticket on the bus, despite of any disruptions such as server or payment issues. Thereby, you would have the option to wait to complete the purchase of your ticket if you were to see an inspector, and during the ticket inspection you would always be able to shift the blame to circumstances for which you yourself are responsible.

Therefore, this is among others one of the main reasons why a customer always must ensure to carry the actual ticket before the boarding is proceed.

2.4.2. In particular concerning use of mobile products (delivered via text message or app)
It is the customer's responsibility to ensure that the travel document has been received on the mobile device before boarding. It is not sufficient that the order has commenced.

Comments and decision

The appeal case.

(I would like to file a complaint for being wrongly accused of not having a ticket by the controller. My ticket was bought at 18:46 (seconds before I got on the bus as I was running to catch it before it departs) when the controller wrongly accused me of having bought it when on board. Time of fee is 18:49.)

By comparing the time of the GPS with the time of the purchase of the ticket, Movia has found that the ticket was received after the bus had left the stop, which corresponds to the inspector's note.

The bus left Bådehavnsgade at 18:46:28, where XX boarded according to herself and the inspector. She started her purchase at 18:46:32 and finally received her ticket at 18:46:44.

Movias conclusion

Movia does not find that we can take the responsibility of the too late bought mobile ticket, that XX received on the day in question. It is always the customers own responsibility to ensure that the final ticket is received prior to boarding. Only when having the exact ticket, a customer can board the bus.

Movia maintains the inspection fee since XX 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 is an area with a high risk of circumvention for payment of the journey if it is accepted that a mobile ticket can be received after boarding. It is an area where it is easy to save money if you have the possibility to only complete a placed order if noticing an inspector. We expect, before choosing to travel, that you have assessed yourself whether you can take responsibility for the ticket purchase or not; hereby have assessed yourself with the fact that you can only board in case of an actual ticket.

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

Hertil har klageren bemærket:

” Dear Betina Johansen and Movia Customer Service,

I am writing to appeal the inspection fee imposed on me, under case number 23-0357. I fully understand the necessity of carrying a valid ticket and have always adhered to this rule, as evidenced by my history of travel with Movia.

On the incident day, unforeseen circumstances, including adverse weather conditions and an unexpected early bus arrival according to Google Maps, led to a rush on my part. It’s crucial to acknowledge that GPS timings, while highly reliable, are not infallible and can sometimes lack the necessary temporal precision for real-time decisions. This lack of precision, coupled with the necessity to run in high heels under the rain, significantly impacted my ability to board the bus at the anticipated time.

I had initiated the ticket purchase process on my phone but had to abruptly stop to catch the bus, believing I had already completed my purchase. My intent was not to evade fare payment but to manage an exceptional situation as efficiently as possible. After boarding the bus, I sat down to take a breath and opened my phone to show the ticket purchase to the inspector upon request which illustrates the tight margin within which this incident occurred.

Given these circumstances, I respectfully request a reevaluation of the fine. This incident was a rare occurrence in my otherwise consistent record of compliance with Movia’s ticketing requirements. I hope for a consideration of the mitigating factors, including the inherent limitations of GPS technology in accurately predicting bus arrival times, which contributed to this oversight.

I appreciate your understanding and am open to further discussion or to provide any additional information required.”

Hertil har indklagede bemærket:

” *“On the incident day, unforeseen circumstances, including adverse weather conditions and an unexpected early bus arrival according to Google Maps, led to a rush on my part.”*

Movia refers to the Joint National Travel Regulations § 2.4.2. It is the customer's own responsibility to ensure that the travel document has been received on the mobile device before boarding. It is not sufficient that the order has commenced.

Movia refers to that this rule applies in all kinds of weather conditions.

Furthermore, the rule is not determined by whether the bus departs earlier or later than planned.

For the specific bus we can see that the bus departs later than planned. According to the schedule it should have departed at 18:46:02, but the bus did not depart until at 18:46:28.

7A	132	Sjælør St.	Rødovrehallen	1192	Bådehavns-gade	18:45	18:45:57	18:46:02	18:46:13	18:46:28	18:46:35
----	-----	------------	---------------	------	----------------	-------	----------	----------	----------	----------	----------

The bus 7A departs every 6th – 8th minute at the time of departure. Therefore, the complainant could easily have waited for the next bus.

"It's crucial to acknowledge that GPS timings, while highly reliable, are not infallible and can sometimes lack the necessary temporal precision for real-time decisions. This lack of precision, coupled with the necessity to run in high heels under the rain, significantly impacted my ability to board the bus at the anticipated time."

First, our data is very reliable. In addition to the times of the GPS there is a very clear note from the inspector that the complainant did not start the purchase of the ticket until she was sitting down inside the bus.

Secondly, we can not see how high heels play into the matter, since Movia can not take the responsibility for how the customers are dressed.

"I had initiated the ticket purchase process on my phone but had to abruptly stop to catch the bus, believing I had already completed my purchase. My intent was not to evade fare payment but to manage an exceptional situation as efficiently as possible. After boarding the bus, I sat down to take a breath and opened my phone to show the ticket purchase to the inspector upon request which illustrates the tight margin within which this incident occurred."

The bus departed from Bådehavns-gade at 18:46:28, and the whole process of the purchase did not start until at 18:46:32. Therefore, we think that data supports the note made by the inspector. It is the customer's own responsibility to ensure that the ticket is received before boarding."

På ankenævnets vegne

Lone Bach Nielsen
Nævnensformand