

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer:	23-0379
Klageren:	XX 2400 København NV
Indklagede:	Movia
CVR-nummer:	29 89 65 69
Klagen vedrører:	Kontrolafgift på 1.000 kr. grundet manglende straks check ind på Rejse-kort
Parternes krav:	Klageren ønsker, at ankenævnet annullerer kontrolafgiften, og gør gældende, at hun kom løbende til bussen og steg ombord i sidste øjeblik, før den kørte, samt at hun checkede ind maksimalt 5 sekunder herefter 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.

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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 steg den 19. oktober 2023 ombord på Movias buslinje 5C ved stoppestedet Hulgårdsplads, hvortil bussen i henhold til GPS-loggen ankom kl. 08:09:39. Ved samme stoppested steg kontrollører som de sidste ombord på bussen. Kontrollørerne har logget påstigningstidspunktet til kl. 08:09:42, og kl. 08:10:00 afgik bussen fra stoppestedet.

Det fremgår af klagerens rejsekorthistorik, at hun først efter bussens afgang fra stoppestedet checkede sit Rejsekort ind kl. 08:10:06, hvilket skete umiddelbart før kontrolløren af hendes rejsehjemmel, idet kontrolmærket blev sat på hendes Rejsekort kl. 08:10:07 – 1 sekund efter hendes check ind.

Klageren blev herefter pålagt en kontrolafgift på 1.000 kr. for at checke ind efter kontrollørernes påstigning. Kontrollørerne har bemærket følgende på den elektroniske kontrolafgift:

"		"
Bemærkning	Kommer ind ved Hulegårdaplads sætter sig ned og da hun får øje på vi kommer lige inden bussen køre fra stoppestedet rejser hun sig hurtigt op for at checke sit rejsekort ind	

Klageren anmodede samme dag Movia om at frafalde kontrolafgiften og anførte, at hun kom løbende og steg på bussen ad midterdørene i allersidste sekund. Da hun ikke havde fået Rejsekortet ud af sin taske, og da bussen begyndte at køre med det samme, satte hun sig på en ledig plads lige ved check ind kortlæseren for at tage Rejsekortet ud af tasken, hvorefter hun med det samme checkede ind. Ifølge klageren gik der maksimalt 5 sekunder, fra hun steg på bussen, til hun checkede ind. Hun oplyste videre, at hun for nylig var flyttet til Danmark fra Island for at studere, og at hun ikke var bekendt med reglen om, at hun ikke måtte sætte sig kort tid, før hun checkede ind.

Movia fastholdt kontrolafgiften den 28. november 2023 med henvisning til selvbetjeningssystemet og reglen om, at Rejsekort skal checkes ind umiddelbart ved påstigning, hvilket klageren ikke havde gjort den pågældende dag. Movia anførte videre, at hvis man passerer kortlæseren og finder en plads uden at tjekke sit Rejsekort ind, har man startet sin rejse uden gyldig billet, og check ind på et senere tidspunkt vil ikke være gyldigt.

Movia har under ankenævns sagen indsendt tekniske logs fra den elektroniske kontrolafgift, bussens GPS og klagerens rejsehistorik, som fremgår nedenfor under parternes argumenter over for ankenævnet.

ANKENÆVNETS BEGRUNDELSE FOR AFGØRELSEN:

Ankenævnet lægger på baggrund af klagerens egne oplysninger til grund, at hun ved påstigning på Movias buslinje 5C ved stoppestedet Hulgårds Plads passerede en check-ind-kortlæser i bussen uden at checke ind og satte sig på et sæde for at finde Rejsekortet frem fra sin taske.

På baggrund af de elektroniske logs i sagen lægges det endvidere til grund, at hun checkede ind 6 sekunder efter, at bussen havde forladt stoppestedet, hvor kontrollørerne som de sidste også steg ombord på bussen.

Ankenævnet finder på denne baggrund, at klageren ikke har overholdt reglen i de fælles landsdækkende rejseregler om, at check ind i busser skal ske straks efter påstigning, uden unødigt ophold, og inden passageren sætter sig ned.

Kontrolafgiften blev dermed pålagt klageren med rette.

Det bemærkes, at en passager, som stiger ind i bussen uden samtidigt at checke ind, selv må bære risikoen for ikke at kunne forevise gyldig rejsehjemmel ved en efterfølgende kontrol, og det kan efter ankenævnets opfattelse ikke føre til et andet resultat, at klageren for nylig var flyttet til Danmark og ikke var bekendt med reglen om, at man skal checke ind med det samme, når man stiger ombord.

Pligten til at betale kontrolafgift er ikke betinget af, at passageren bevidst har forsøgt at omgå rejsereglerne, og da dette er et område med oplagt mulighed for omgåelse af reglerne om at checke ind ved rejsens begyndelse, er det ankenævnets opfattelse, at der ikke har foreligget sådanne særlige omstændigheder, at klageren kan fritages for betaling af kontrolafgiften.

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 moved to Denmark from Iceland to start my studies 2,5 months ago, and had been living in Copenhagen for only a few weeks when I received a ticket from Movia on my way to school. So, I was going to take the bus to school one morning in October and was running after the bus as I was almost missing it. Im on my

way to school at 08:00 in the morning with all my school stuff and computer in my hands. I rushed in to the bus (5C) through the middle door. In the bus there is a seat right next to the door that I came in through, with a card reader right by its side. As soon as I got in to the bus, the bus starts moving. I have my hands completely full and decide to put my school bag and computer on the the seat so I would be able to get my rejsekort out of my purse in my bag and check in, as it was in my in my schoolbag. This took me maybe 5 seconds from entering the bus and checking in. Then I sat down. A minute after I sat down there came a ticket inspector and was asking everybody for there rejsekort. I handed him mine and it was of course checked in. He proceeds to print out a ticket and I am very confused here, as it obviously was checked in. His reason was that I didn't immediately check in the second I got in, i tried to explain my reason - that it took my maybe 5 seconds as I had to get my rejsekort out of my bag and put my computer and bag down, so that I could access my rejsekort to check in. He had already printed out a ticket so he said he couldn't take it back unfortunately . He understood my reasoning (bear in mind I had only lived in Copenhagen and taken the transport here for a couple of weeks, and had no idea there was a rule and that this was a reason to get a ticket for. I am a very reliable and responsible person and of course always check in my travel card, and never ever want to be made out to be cheating. I honestly didn't know any better as I come from a very different country and transportation. I am a student and find 1.000kr a very high price to pay for something I find extremely unfair. I wouldn't be sending in this complaint if this wouldn't be important to me. Of course now after this I have educated my self on the transportation system here, and never ever want to be in this position again. I would really like for you to see my reasoning and give me a chance and reconsider this ticket."

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. Therefore, if a customer has taken place in the bus, it is expected that the customer can present a Rejsekort that is checked in correctly during the inspection afterwards. Failure to check in immediately upon boarding means that the card bearer travels without a legally valid travel document and an inspection fee may therefore be issued. If the customer does not check in immediately upon boarding, a check in later will not be considered as valid.

The inspection fee in this case is issued due to late check in.

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

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.

Inspection fee

The ticket inspector entered the bus at bus stop Hulgårds Plads, which is the same bus stop where Emilía boarded. The inspector observed that Emilía was sitting in the bus when he entered, and that she wanted to check in after noticing the inspector. When the ticket inspection began, complainant got up and checked in. At that time the bus had already departed.

Due to the late check in, the inspector registered the reason for the inspection as "Rejsekort checket ind efter kontrollørs påstigning", which literally means that the card was not checked in until the inspector boarded the bus.

Årsag

Rejsekort checket ind efter kontrollørs påstigning

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.

After been issuing the fine the inspector wrote details about the incident. He wrote that she was sitting down and did not want to check in until she noticed the inspector. According to the inspector she should have left the seat quickly to do the check in as soon as she noticed the inspector.

Bemærkning

Kommer ind ved Hulegårdsplads sætter sig ned og da hun får øje på vi kommer lige inden bussen køre fra stoppestedet rejser hun sig hurtigt op for at checke sit rejsekort ind

In means of transport where the card readers are located inside, it is expected that the customer checks in before taking a seat, since then it will not be possible only to check in if seeing an inspector.

Comments and decision

The bus arrives at Hulegårds Plads at 08:09:38 and departs at 08:10:00.

#	Stoppested	Stopindikator	Pl. ank.	Pl. afg.	Obs. ank.	Obs. afg.
1	Husum Torv, Sløjfen (2219)	● ●	07:57	07:57	07:52:01	07:58:14
2	Husumvej (2275)	● ●	07:58	07:58	07:59:35	07:59:54
3	Kobbelvænget (1966)	● ●	07:59	07:59	08:00:53	08:01:12
4	Veksøvej (2008)	● ●	08:00	08:00	08:01:58	08:03:02
5	Astrupvej (2009)	● ●	08:02	08:02	08:04:16	08:04:28
6	Brønshøj Torv (2010)	● ●	08:03	08:03	08:05:07	08:05:07
7	Hyrdevangen (2012)	● ●	08:05	08:05	08:06:30	08:06:51
8	Bellaahøj (2149)	● ●	08:07	08:07	08:07:43	08:08:12
9	Hulegårds Plads (2150)	● ●	08:08	08:08	08:09:39	08:10:00
10	Glasvej (1968)	● ●	08:10	08:10	08:11:33	08:11:51

The ticket inspectors enter the bus at 08:09:42:

Stop	Hulegårds Plads
Tur ID	0
Påstigning	19-10-2023 08:09:42
Udstedt dato/tid	19-10-2023 08:13:02
Stået af	19-10-2023 08:17:03

We can see that complainant checks in at 08:10:06 which is after the bus departs at 08:10:00:

54	19-10-2023 08:10	Linje : 5C Hulgårds Plads	08:16	Linje : 5C Nørrebros Runddel St.	-18,00	135,20
Aktivitet	Type	Dato / Tid	Sted			
137	Check ind	19-10-2023 08:10:06	Hulgårds Plads			
137	Kontrolmærke	19-10-2023 08:10:07	Nørrebros Runddel St.			
138	Check ud	19-10-2023 08:16:44	Nørrebros Runddel St.			

Movia finds this confirms the ticket inspector's observation.

Extract from the complainant:

"This morning i was going to my university and ran in the bus at the very last second, through the middle door. Right when i came in the bus, i reached in my school bag for my purse to grab my "rejsekort", but the bus started driving right away, so i saw a free seat right by the "check in pole" and decided to sit there just to be able to get my rejsekort out of my school bag, as the bus was already on the move, than i checked in straight away. This was maximum 5 seconds after i got on the bus."

Our data shows that the bus was stopping at Hulgårds Plads for 21 seconds and that Emilía checked in 6 seconds after the bus had departed. Furthermore, we dwell on the note of the inspector that clearly says that she was sitting down and not that she was looking for something. Movia always recommends customers to keep the card ready before boarding so the check in can be completed as soon as they enter the bus, since the opportunity of checking in immediately is strongly limited if the card is placed in a bag or the likes.

Data also shows that all 5 C/I card readers were in service around the time of Emilía's travel, which indicates that other passengers were able to check in.

		DC	0 (CU)	1 (CI)	2 (CU)	3 (CU)	4 (CU)	5 (CI)	6 (GCI)	7 (GCI)	8 (CU)	9 (CI)
Stop	Tid	111283	134F3F	132FCC	1338B0	132228	1340AA	1339E3	13F731	13F42A	133324	134404
Husum Torv, Sløjfen (2219)	07:56:10	0	0	0	0	1	0	0	0	0	0	0
Veksøvej (2008)	08:02:00	0	0	0	0	0	0	0	0	2	0	1
Hyrdevangen (2012)	08:06:32	0	0	0	0	0	0	1	0	2	0	0
Bellahøj (2149)	08:07:43	0	0	1	0	0	0	0	0	0	0	0
Hulgårds Plads (2150)	08:09:43	0	0	0	0	0	0	2	0	1	0	0
Glasvej (1968)	08:11:35	0	0	1	0	0	0	0	3	1	0	0

The customer is obliged to check in immediately after boarding. Complainant checked in after the bus departed the bus stop 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 travel document is due to a mistake, attempt at deliberate cheating, oversight, or other things.

An inspection fee is not conditional on whether a customer have deliberately tried to evade payment or whether there are errors 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 Movia finds that inspection fee has been correctly issued.

It is an area with a high risk of circumventing the rules on being able to present a valid ticket if it is accepted that you can check in your Rejsekort after finding a seat and after the ticket inspectors enters the bus.

In this case we are particularly committed to the fact that the complainant had already taken a seat before checking in and that the bus had already left the stop. Furthermore, we refer to the inspectors note that says that she wanted to check in as soon as she observed the inspector.”

På ankenævnets vegne



Lone Bach Nielsen
Nævnensformand