

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

| | |
|-----------------------------------|---|
| Journalnummer: | 24-0049 |
| Klageren: | XX 2200 København N |
| 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 den var unfair, idet der var dårlig information om rejseruten Indklagede fastholder kontrolafgiften |
| Ankenævnets sammensætning: | Nævnensformand, dommer Lone Bach Nielsen Torben Steenberg (2 stemmer) Helle Berg Johansen Dorte Lundqvist Bang |

Ankenævnet for Bus, Tog og Metro har på sit møde den 28. august 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 rejste den 18. november 2023 med Movias buslinje 6A, da der var kontrol i bussen.

Det er uoplyst, hvor klageren steg på bussen, men kontrollørerne steg ombord ved stoppestedet Nørreport st., som ligger i zone 01, kl. 13:07:44.

Ved den efterfølgende kontrol, som foregik i zone 01, foreviste klageren et 5-zoners pendlerkort, der var gyldigt til zonerne 02, 32, 43, 54 og 66, men ikke til zone 01, hvor han rejste, og kontrollørerne pålagde ham derfor en kontrolafgift på 1.000 kr. for manglende zone på pendlerkortet.

Kontrolafgiften blev udstedt kl. 13:11:33, mens bussen fortsat befandt sig i zone 01.

Uddrag af bussens køreplan:

| Rute | Zone | Stoppesteder |
|----------------------------|------|--|
| Nørre Voldgade Sølvgade | 1 | Nørreport St. Georg Brandes Plads, Sølvtorvet |
| Tagensvej | | Rigshospitalet Syd Nørre Campus |
| | 2 | Jagtvej Egirsgade Skjolds Plads St. Rovsingsgade Bispebjerg St. Lygten Bispebjerg Hospital |

Uddrag af bussens GPS-log:

| # | Stoppested | Stopindikator | Pl. ank. | Pl. afg. | Obs. ank. | Obs. afg. |
|---|--|---------------|----------|----------|-----------|-----------|
| 1 | Nørreport St. (50460) | ● ● | 13:08 | 13:08 | 13:07:34 | 13:08:11 |
| 2 | Georg Brandes Plads, Parkmuseerne (7026) | ● ● | 13:09 | 13:09 | 13:10:18 | 13:10:31 |
| 3 | Sølvtorvet (6022) | ● ● | 13:10 | 13:10 | 13:11:01 | 13:11:27 |
| 4 | Rigshospitalet Syd (6023) | ● ● | 13:12 | 13:12 | 13:13:50 | 13:14:06 |
| 5 | Nørre Campus (7030) | ● ● | 13:14 | 13:14 | 13:15:32 | 13:15:48 |
| 6 | Jagtvej (7032) | ● ● | 13:15 | 13:15 | 13:17:00 | 13:17:18 |

Den 6. december 2023 – 18 dage efter kontrollen – anmodede klageren Movia om at fratage kontrolafgiften og anførte:

"I received a fine because I was in the wrong zone. The bus driver told me I can travel with the 5 zone commuter card but the person controlling the ticket said I cannot. I don't think I should pay the fine as the bus driver assured me the ticket was valid for the trip."

Movia fastholdt kontrolafgiften den 25. januar 2024 med henvisning til selvbetjeningssystemet og begrundede videre:

"Movia's ticket inspectors always make a note whether the customer has stated during inspection that they have asked the driver for advice regarding tickets. On this specific

inspection fee the ticket inspector has chosen NO to this. The ticket inspector has therefore not had the possibility to have a mistake or permission confirmed by the driver.

When ordering a Commuter Pass in the ticket app, you have the option to search for your journey. The app will show you different combinations of zones based on the different ways to get from A to B.

It is important that you choose a Commuter Pass that covers the zones you are travelling in. The app only makes suggestions - you have to pay attention yourself, that you only travel in the zones, you have a valid ticket for.

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 a another zone you must purchase an extension ticket before commencing your journey.”

Uddrag af den elektroniske kontrolafgift:

”

| | |
|---------------------------------------|---|
| Stop | Nørreport St. |
| Påstigning | 18-11-2023 13:07:44 |
| Udstedt dato/tid | 18-11-2023 13:11:33 |
| Stået af | 18-11-2023 13:16:10 |
| Passager tal | 19 |
| Kontrol spørgsmål stillet | Nej |
| Kunden har forespurgt chauffør | Nej |
| Jeg har forespurgt chauffør | Nej |
| Kort inddraget | Nej |
| Sprog | Ukendt |
| Årsag | Pendlerkort mangler zone |
| Bemærkning | Ville ikke sammenarbejde Og vise billet igen og ville have jeg skulle tilkalde politi |

”

ANKENÆVNETS BEGRUNDELSE FOR AFGØRELSEN:

Klageren foreviste ved kontrollen i zone 01 et pendlerkort, som ikke var gyldigt i denne zone.

Kontrolafgiften blev derfor pålagt med rette.

Et pendlerkortprodukt er rabatteret og har den betingelse tilknyttet, at det alene er gyldigt til de

specifikke zoner, som kunden har bedt om, at kortet udstedes til. Når kunden afviger fra den rute, som kortet er købt til, har kunden en særlig anledning til at sikre sig, at kortet er gyldigt til den ændrede rejserute.

Det kan ikke lægges til grund af ankenævnet, at klageren fik oplyst af chaufføren, at han kunne rejse på sit pendlerkort i zone 01. Hvis klageren havde fået denne information af chaufføren, ville det efter ankenævnets opfattelse have været naturligt at oplyse dette til kontrolløren i kontrolsituationen, hvilket klageren i henhold til den elektroniske kontrolafgift ikke gjorde.

Pligten til at betale kontrolafgift er ikke betinget af, om passageren bevidst har forsøgt at unddrage sig betaling for rejsen, og da dette er et område med oplagt mulighed for omgåelse af reglerne om at betale for hele sin rejse, finder ankenævnet, at der ikke har foreligget sådanne særlige omstændigheder, at klageren skal fritages for 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 don't think you understand what it means to receive an inspection fee as you probably don't use common transportation every day for many years but i do, and i received plenty of them, but this one its unfair and as i told you in the first complain that i was wrong informed about the route. Its frustrating because I'm paying a lot of money monthly for a bad service, for being intimidated by your inspectors that are everywhere even using video cameras on there chest like police officers, i will not be surprised if in couple of years they will wear a gun. I thought the public transportation system is based on trust not on inspectors

intimidating people and excessive control. I suggest that movia and dsb should invest the money for delayed trains, peoples comfort, costumer service and self service...no ticket, no entry but as i said before, this is mass manipulation in order to give more fines and pay your inspectors that never smile and behave like soldiers but its understandable in the end, you people need to eat as well. I don't want to pay the fine and i want you to highly consider what I'm writing now and as well consider the complains i made about some bus drivers behavior and all the stuff from Movia and metro and was nothing improved so far. "

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 his commuter pass did not have the necessary zone 1 included in which he travelled when meeting the inspector. The inspection took place in zone 1, where XX presented a commuter pass with the zones 2, 32, 43, 54 and 66.

Movia 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 customer 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 XX is responsible himself for ensure that the of zones on his commuter pass is sufficient to his travel.

Since XX did not get in contact with us until the 06.12.2023, we assessed that it was too late to receive any useful information from the driver. An inquiry where persons are to be questioned should preferably come within 14 days, which was not the case. We refer to § 16 where it says that a request must be made as soon as possible after the occurrence of the event the customer wishes to complain about. If there is a long delay before the complaint is received, it can be difficult to investigate what happened.

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.

16. Complaints

Complaints about matters that could not be resolved by contacting the staff of the means of transport should be addressed to the company with which the customer travelled.

Complaints about inspection fees must always be addressed to the company that charged the fee. Complaints regarding Rejsekort must be addressed to the Rejsekort Customer Service. All complaints can be submitted in writing, preferably with an exact specification of the time and place of the incident. The request must be made as soon as possible after the occurrence of the event the customer wishes to complain about. If there is a long delay before the complaint is received, it can be difficult to investigate what happened. In addition, the customer may forfeit any claim under the general rules of limitation and inaction.

Inspection fee

On the day in question the inspection team boarded the bus at Nørreport in zone 001. Based on the complaint XX made it is not clear where he boarded the bus, since his fine number is written on the question about his boarding.

Where did you board the bus?: [REDACTED]

Where did you get off the bus?: Noreport

Since the fine was written while the bus was in zone 1, we think we have enough evidence for that XX did not present a valid ticket. This is because he was missing zone 1 on his commuter card.

| Rute | Zone | Stoppesteder |
|----------------------------|------|--|
| Nørre Voldgade Sølvgade | 1 | Nørreport St. Georg Brandes Plads, Sølvtorvet Rigshospitalet Syd Nørre Campus |
| Tagensvej | | [REDACTED] |
| | 2 | Jagtvej Ægirsgade Skjolds Plads St. Rovsingsgade Bispebjerg St. Lygten Bispebjerg Hospital |

According to the note made by the inspector about the fine, he claims that the complainant did not want to collaborate in the situation, and that he did not want to present his pass a second time.

Bemærkning

Ville ikke samarbejde Og vise billet igen og ville have jeg skulle tilkalde politi

| # | Stoppested | Stopindikator | Pl. ank. | Pl. afg. | Obs. ank. | Obs. afg. |
|---|--|---------------|----------|----------|-----------|-----------|
| 1 | Nørreport St. (50460) | ● ● | 13:08 | 13:08 | 13:07:34 | 13:08:11 |
| 2 | Georg Brandes Plads, Parkmuseerne (7026) | ● ● | 13:09 | 13:09 | 13:10:18 | 13:10:31 |
| 3 | Sølvtorvet (6022) | ● ● | 13:10 | 13:10 | 13:11:01 | 13:11:27 |
| 4 | Rigshospitalet Syd (6023) | ● ● | 13:12 | 13:12 | 13:13:50 | 13:14:06 |
| 5 | Nørre Campus (7030) | ● ● | 13:14 | 13:14 | 13:15:32 | 13:15:48 |
| 6 | Jagtvej (7032) | ● ● | 13:15 | 13:15 | 13:17:00 | 13:17:18 |

The fee was issued at 13:11:33 for the reason “Pendlerkort mangler zone” – “Commuter pass missing zone”. At that time the bus was still in zone 1 cf. the tour overview.

| | |
|------------------|---------------------|
| Stop | Nørreport St. |
| Påstigning | 18-11-2023 13:07:44 |
| Udstedt dato/tid | 18-11-2023 13:11:33 |
| Stået af | 18-11-2023 13:16:10 |

| | |
|-------|--------------------------|
| Årsag | Pendlerkort mangler zone |
|-------|--------------------------|

When investigating the commuter pass, we see that XX´ commuter pass covered the zones 2, 32, 43, 54, 66, but not 1, in which the inspection took place.

| Billet information | |
|---|--|
| BILLETTYPE: Pendlerkort | PASSAGERTYPE: Voksen |
| STAMKORTNUMMER: [REDACTED] | STARTZONE: IKKE OPLYST |
| VARENUMMER: 540 | SLUTZONE: IKKE OPLYST |
| BILLETSTATUS: Udløbet | ANTAL GYLDIGE ZONER: 5 |
| BILLET GYLDIG FRA: 23 Okt 2023 - 12:48:44 | GYLDIGE ZONER: 1002, 1032, 1043, 1054, 1066 |
| BILLET GYLDIG TIL: 22 Nov 2023 - 03:59:59 | SØGEMETODE FRA: Universitetsparken (Jagtvej) |
| PRIS: 930,00 kr. | SØGEMETODE TIL: Søgning på adresse: Dybendal Alle 1, 2630 Taastrup, Høje-Taastrup Kommune |

Comments and decision

On the information of the complainant´s commuter pass, it appears that it is based on the start location (Universitetsparken, Jagtvej) and the end location (Dybendal Allé 1 in Taastrup).

SØGEMETODE FRA:

Universitetsparken (Jagtvej)

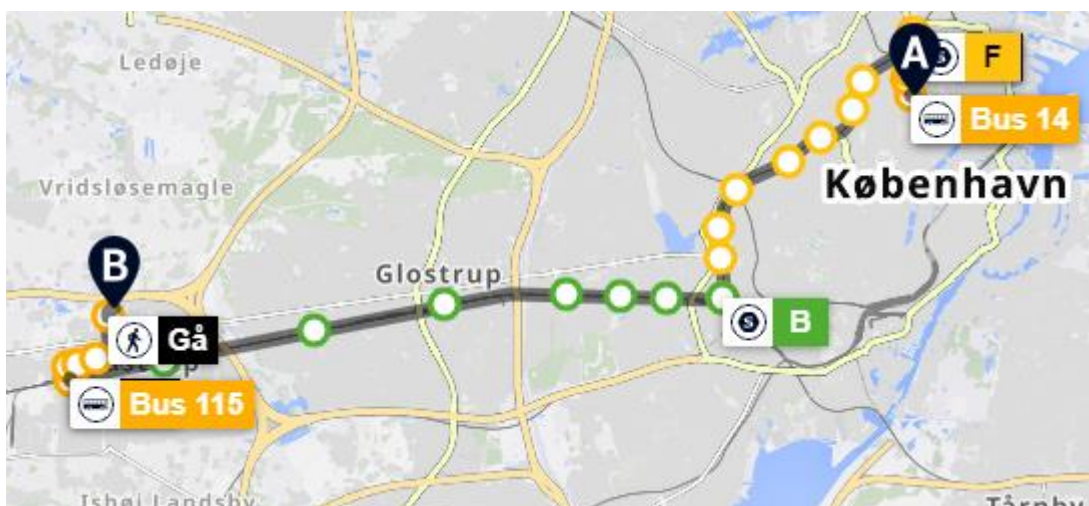
SØGEMETODE TIL:

Søgning på adresse: Dybendal Alle 1,
2630 Taastrup, Høje-Taastrup Kommune

When ordering a Commuter Pass in the ticket app, you have the option to search for your journey. The app will show you different combinations of zones based on the different ways to get from A to B. It is important that you choose a Commuter Pass that covers the zones you are travelling in. The app only makes suggestions - you must pay attention yourself, that you only travel in the zones, you have a valid ticket for.

When searching for travel options between Universitetsparken and Dybendal Allé on www.rejseplanen.dk, we mostly find options where zone 1 is not a part of the suggestions.

As an example, we found an option seen below where the bus at no time is in the central part of the city (Zone 1).



When you travel on commuter passes with wrong 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.

We can see on the tour overview that complainant boarded a zone, in which he did not have a valid ticket for.

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, like complainant, you must purchase an extension ticket before commencing your journey.

Extract from the appeal case

"I received a fine because I was in the wrong zone. The bus driver told me I can travel with the 5 zone commuter card but the person controlling the ticket said I cannot. I don't think I should pay the fine as the bus driver assured me the ticket was valid for the trip."

We emphasize that we received the complaint so late that it has not been realistic to get any description from the driver about the incident. 6A is a bus line with a very large number of travelers every day. Therefore, when addressing matters where drivers must be heard, we refer to the fact that a maximum of 14 days will pass.

Having said that, it is correct that complainant can travel in 5 zones, but the zones must be: 2, 32, 43, 54 and 66, and not zone 1.

Movia 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.

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

Movia does not find that we can take the responsibility of the invalid ticket that XX presented on the day in question. We think that there exist sufficient guidelines when purchasing tickets and commuter passes. For example, 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.

By orienting yourself at the bus stop and on your commuter card about zones, a customer should know when travelling with a valid ticket or not. Therefore, boarding takes place at own risk if one boards the bus despite having wrong zones. We will point out that it is not a condition that fraud or other deliberate evasion of payment has been involved in the reason for not having valid ticket before a fee is issued. The issuance is determined by whether the customer can present a valid ticket or not.

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.

A passenger must always ensure before boarding that the ticket is in accordance with the requirements. 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 from the beginning of the journey and maintain the inspection fee."

På ankenævnets vegne



Lone Bach Nielsen
Nævnensformand