

## AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 24-0179
- Klageren:** XX på vegne af datteren YY  
2000 Frederiksberg
- Indklagede:** Movia  
**CVR-nummer:** 29 89 65 69
- Klagen vedrører:** Kontrolafgift på 1.000 kr. grundet manglende aktivering af ny pendlerperiode inden påstigning
- Parternes krav:** Klageren ønsker, at ankenævnet annullerer kontrolafgiften, og gør gældende, at datteren glemte at checke ind, da hun kom løbende efter bussen og havde travlt
- 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.

-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](http://www.domstol.dk), [www.advokatnoeglen.dk](http://www.advokatnoeglen.dk) og /eller eget forsikringssselskab om eventuel forsikringsretshjælp.

### **SAGENS OMSTÆNDIGHEDER:**

Klagerens datter har et Rejsekort Pendler, der skal aktiveres med check ind for at påbegynde en ny periode. Først når pendlerkortet checkes ind, løber den fastsatte 30-dages gyldighed. Hvis kortet ikke checkes ind, vil der ikke blive påbegyndt nogen pendlerperiode, og efter 30 dage, vil kunden modtage det reserverede beløb retur på bankkontoen.

Klagerens datter steg om bord på bussen Mariendalsvej, der forlod dette stoppested kl. 14:51.

Da kontrollører efterfølgende kl. 14:59 satte et kontrolmærke på hendes Rejsekort, var den nye pendlerperiode ikke blevet aktiveret med et check ind og hun blev pålagt en kontrolafgift på 1.000 kr.

Dette klagede hun over til Movia, der fastholdt den. Herefter indbragte klageren sagen for ankenævnet, hvortil Movia har oplyst, at datteren tidligere er blevet pålagt en kontrolafgift for samme forhold, som Movia dog valgte af annullere pr. kulance, hvorfor datteren burde have været mere omhyggelig med at huske at aktivere en periode med check ind.

### **ANKENÆVNETS BEGRUNDELSE FOR AFGØRELSEN:**

Klagerens datters pendlerperiode var ikke aktiveret med et check ind 8 minutter efter, at datteren var steget på bussen og hendes Rejsekort blev kontrolleret.

Kontrolafgiften for manglende gyldig rejsehjemmel blev dermed pålagt med rette, og som følge af den oplagte mulighed for omgåelse af at betale for sin rejse, hvis det accepteres, at en pendlerperiode kan aktiveres efter en kontrolafgift, og da det ikke er en betingelse for at pålægge en kontrolafgift, at passageren bevidst har søgt at unddrage sig at betale for rejsen, finder ankenævnet, at der ikke har foreligget sådanne særlige omstændigheder, 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 rejsebegrænsninger ikke overholdes (f.eks. for hvornår cykler må medtages, eller om der er betalt

metrotillæg). 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:**

“ The fine was issued as my daughter had not activated the commuter card after recharge and missed to activate in again when she got on the bus.

She was in a hurry as she was rushing to meet the social worker from Commune.

My request is to consider her being a minor and reduce the penalty charges.

This offence will not be repeated again and I apologize on her behalf for this negligence.

I can assure you that there is no attempt to cheat by deliberately checking in later..

If that would have been the case, her card would not have been recharged couple of days ahead of period expiry to avoid these instances

I can only tell here that as a parent I am struggling with a lot of behaviour issues with [klagerens datter] and hence the commune is also involved

It is really difficult for me to justify her behaviour but also at the same time the penalty amount is huge.

To avoid this situation, I have now her monthly pass activated on her mobile so this whole dependency of checking in and activating is reduced to 0%

I will really appreciate the kind consideration of the appeal board this time :(

I understand that if the case is not in my favour the complaint fee won't be reimbursed but I can take this chance and wait for a decision..”

### **Indklagede anfører følgende:**

”

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

[klagerens datter]s case relates to the fact that she did not present any valid ticket during the ticket inspection. This is caused by, that her presented Commuter Pass Rejsekort was not activated when meeting the inspector in the bus.

#### Commuter Pass as a Rejsekort

Travelling with a Commuter Pass as a Rejsekort is an efficient solution for customers who often travel on the same route on weekly or even daily basis. When a payment has been completed for a period, it is crucial that the card is checked in in order to activate it. The prerequisite for it to be valid is that it is checked in and activated correctly before the customer makes a journey. Checking in is done by holding the card up to a card reader in either a bus or at a station.

When making the activation in means of transport where the reader is located inside, the rules for check-in apply in the same way as the other kinds of Rejsekort; hereby Personal, Flex and Anonymous. According to § 2.4.3 in the Joint National Travel Regulations, the card must be checked in immediately upon boarding.

A journey starts with a check-in and ends with a check-out. In principle, a Commuter Pass must also be checked in at the start of any journey and checked out in the end. However, inspection fees will not be issued if a valid activated card is not checked in provided by that the card is active, valid for the right zones, for the right customer type etc.

If it is accepted that you can travel on a paid Commuter Pass that is not activated, you could easily extend your commuting period to more days that you have not paid for. Therefore, the card is only valid from the moment it is activated and not from the payment moment.

Failure to activate correctly means that the customer is travelling without valid ticket and may therefore be in risk of receiving an inspection fee.

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.*

## **Inspection fee**

The inspector entered the bus the 19.03.2024 at 14:39:21 at Landsdommervej in bus 4A. The inspector stayed in the bus and observed [klagerens datter] boarding the bus later according to the tour overview.

According to complainant, [klagerens datter] did board the bus at Mariendalsvej.

### Hvor steg du på bussen?: Mariendalsvej

#	Stoppested	Stopindikator	Pl. ank.	Pl. afg.	Obs. ank.	Obs. afg.
7	Landsdommervej (341)	● ●	14:38	14:38	14:39:08	14:39:25
8	Bispevej (342)	● ●	14:40	14:40	14:40:16	14:40:29
9	Frederikssundsvej (52041)	● ●	14:42	14:42	14:41:16	14:41:38
10	Nørrebro St. (53198)	● ●	14:44	14:44	14:44:13	14:45:29
11	Hillerødgade (53974)	● ●	14:45	14:45	14:46:10	14:46:23
12	Hillerødgade (1990)	● ●	14:47	14:47	14:48:21	14:48:42
13	Borups Allé (1268)	● ●	14:48	14:48	14:49:23	14:49:37
14	Mariendalsvej (1269)	● ●	14:50	14:50	14:50:47	14:51:18

Since [klagerens datter] presented a non-activated Commuter Pass Rejsekort during the ticket inspection, she therefore received an inspection fee which was issued at 15:00:10.

<b>Stop</b>	Landsdommervej
<b>Påstigning</b>	19-03-2024 14:39:21
<b>Udstedt dato/tid</b>	19-03-2024 15:00:10
<b>Stået af</b>	19-03-2024 15:08:31

### Comments and decision

During the case, we have looked at the Commuter Pass history of [klagerens datter].

We have focused here on her commuter renewals since the beginning of November 2023.

+	03-11-2023 11:43	Periodekort fornyet	Fasanvej St.	
+	152 05-11-2023 14:08	Linje : 4A Mariendalsv./Ndr. Fasanv.	Ukendt sted	0,00
+	02-12-2023 16:55	Periodekort fornyet	Nørrebro St.	
	04-12-2023 09:13	Kontrolmærke	Linje : 4A Nørrebro St.	0,00
+	30-12-2023 17:55	Periodekort fornyet	Fasanvej St.	
+	156 04-01-2024 08:26	Linje : 4A Mariendalsv./Ndr. Fasanv.	Ukendt sted	0,00

	01-02-2024 11:41	Periodekort fornyet	Fasanvej St.	
	160	04-02-2024 13:13	Linje : 12 Borups Allé/Ndr. Fasanvej	Ukendt sted 0,00
	18-03-2024 14:15	Periodekort fornyet	Fasanvej St.	
	19-03-2024 14:59	Kontrolmærke	Linje : 4A Kirsten Walthers Vej	0,00

What catches our eye, is that it usually takes a few days from when she creates the renewal of her card until she activates it. In november, there was 2 days in between, december 2 days, january 5 days, february 3 days and in march it was still not activated the day after the period was created.

#### Previous identical case at the Appeal Board – 23-0109

It also caught our eye, when we noticed that [klagerens datter] has had a previous case of the exact same reason. Complainant then chosed to bring the case to the Appeal Board.

**Bemærkning** | Pendlerkort er ikke aktiveret

At that time, Movia chosed to display conduit to the customer with a final warning.

This case was named 23-0109 and Movia wrote the following information to the customer:

*“To the appeal board*

*Movia has decided to withdraw the inspection fee per ex gratia.*

*We remind complainants to always check in their rejsekort when travelling by bus.”*

Since complainant has had an exact same case at the Appeal Board, which was waived per ex gratia with a warning, we find it incomprehensible that complainant has chosen to bring an identical case to the board again.

#### Extracts from complainant:

*“She was in a hurry as she was rushing to meet the social worker from Kommune. My request is to consider her being a minor and reduce the penalty charges.”*

Movia cannot be held responsible if travelers do not leave on time when they must achieve something important. It is the customers own responsibility to leave on time.

We refer to § 2.4 about responsibility:

#### **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.*

We also refer to § 2.4.3 regarding validation rules of checking in, where it appears that a commuter card must be checked in in buses:

Validation rules:

Rejsekort type	Check In
Rejsekort Personal	Yes
Commuter card	Yes, by bus

Movias conclusion

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.

However, it is an area with a high risk of circumventing the rules on being able to present a valid ticket if it were accepted that you did not have to activate your pass before travelling, since you would then have the chance to spot whether an inspector was on the bus, and if there was not, you could easily avoid activating it and achieve more days on your commuter period for which you had not paid.

Movia emphasizes again that we believe that [klagerens datter] should have paid more attention to activating her card, as she previously had an identical case, which per ex gratia was waived by us with a warning.

Since [klagerens datter] did not check her card in after she had boarded the bus, or since she had not checked it in before her travel and thus had activated her commuter pass, which is required regarding to the travel regulations, Movia finds that the inspection fee has been correctly issued."

På ankenævnets vegne



Lone Bach Nielsen  
Nævnensformand