

AFGØRELSE FRA PARKERINGSKLAGENÆVNET**7. december 2022**

Sagsnummer:	1132
Klageren:	████████████████████ ████████████████████ ████████████████████ ████████████████████
Indklagede:	Q-PARK OPERATIONS DENMARK A/S Gladsaxevej 378 2860 Søborg
Klagen vedrører:	Kontrolafgift på kr. 510,- pålagt for overtrædelse af de skilte vilkår om anvendelse af Q-Park P-tilladelse. Køretøjet i sagen var på tidspunktet for kontrolafgiftens udstedelse parkeret uden Q-Park P-tilladelse.
Parternes krav:	Klageren ønsker kontrolafgiften annulleret. Indklagede ønsker kontrolafgiften opretholdt.
Nævnets sammensætning:	Nævnensformand, dommer Mette Søgaard Vammen Simon Nguyen Kildeby, FDM Bitte Dyrberg, Forbrugerrådet Tænk Thomas Jørgensen, DPPB Steen Jørgensen, DPPB

SAGENS OMSTÆNDIGHEDER:

Denne sag vedrører en kontrolafgift pålagt den 26. marts 2019, kl. 09:19-09:23 for parkering med køretøjet med reg.nr. ██████████ på et område benævnt: "2654 DR-BYEN Kbh. S".

Afgiften er pålagt med begrundelsen: "Ingen kontrollerbar P-tilladelse i forruden / Ingen digital P-tilladelse kontrollerbar".

Der er fremlagt foto af eksempel på skiltningen på p-pladsen. Af skiltningen fremgår:

"INFO P

MAN-SØN 00-24

←-----→

GÆLDER HELE RÆKKEN

RESERVERET

Parkering kun tilladt med gyldig Q-Park P-tilladelse

P-tilladelse placeres let kontrollerbart i forruden

P-tilladelse kan være digital tilladelse fra epark

Parkering kun tilladt i afmærket P-bås

..."

Af sagens oplysninger fremgår, at køretøjet var uden Q-Park P-tilladelse.

PARTERNES SYNSPUNKTER OVER FOR PARKERINGSKLAGENÆVNET:

Klageren har særligt anført følgende:

"...

I park at Q-Park's parking lot at DR Byen almost every workday, as I work in an office near the parking lot. On the day that I received this control fee, I paid for my parking ticket in one of the machines in the parking lot, like I always do. I got my paper ticket and placed it on the dashboard in the front of the car, clearly visible through the front window of my car – like I always do. As part of my appeal, I submitted to Q-Park a scanned copy of the parking ticket I purchased in the Q-Park ticket machine. In the appeal rejection letter that Q-Park sent to me, they state that "Please notes that you can only park here that day with a permit from DR. You cannot park here that day with a ticket." The letter also states that "The parking regulations and the warning of a control fee in case of breach of the regulations are clearly displayed on our signs at this car park." I strongly dispute that the "parking regulations...are clearly displayed on our signs at this car park". The only sign I saw when I parked stated that "Parkering tilladt med gyldig Q-Park P-billet." I did not see any other sign saying that a permit from DR was needed, as was stated in Q-Park's rejection letter. There was also no indication at all that the ticket I purchased in the ticket machine would not be valid on that day. I was able to purchase my ticket from the machine like I do every other workday, without any warning or message to indicate that a permit from DR was needed. I saw that Parkeringsklagenævnet had referenced a few "domstolsbeslut" on its website. These are a couple of those beslut that I think are relevant for my situation: Beslut # 1: Af Højesterets afgørelse (U.20-14.17-19H) fremgår: "Når en bilist parkerer på et privat område, må den pågældende som udgangspunkt anses for at have accepteret de opstillede restriktioner for parkeringen, hvis disse fremgår af skiltningen på en klar og forståelig måde." In my case, the signs that I saw did not say that a permit from DR was required. I dispute that I have "accepteret de opstillede restriktioner for parkeringen" that Q-Park is referring to in their rejection letter. I was never informed that a permit from DR was required. Af Vestre Landsrets afgørelse (U.20-17.3101V) fremgår: "[...] det var muligt at indløse både P-billetter og P-beviser i de automater, som var opstillet på pladsen. Under disse omstændigheder må der stilles skærpede krav til tydelig skiltning af, hvilke områder en p-tilladelse i form af enten et P-bevis eller en P-billet er gyldig i, ligesom det skal være tydeligt, fra hvilke automater de forskellige parkeringstilladelser kan købes." In my case, there no "skiltning", no warning, no sign, no message at all on the ticket machine that the parking ticket would not be valid, or that a permit from DR was needed. Q Park's ticket machine took my 60 DKK that I paid to park, without providing any warning that the ticket was not valid. Based on these circumstances, I dispute the control fee from Q-Park. I note here that I have received one more control fee from Q-Park, under identical

circumstances as those described above (control fee # 2792185). I have appealed that fee as well to Q-Park, but I have not received a response yet. I also note that I have been parking daily at DR Byen for about seven months now. These are the only control fees I have received during this period.

...”

”...

I would ask that Parkeringsklagenævnet takes the following into consideration, in response to Q-Park’s comments.

1. The road leading into the DR Byen parking lot has a large sign that says “BETALINGSPARKERING”. There is no indication on this sign that special parking permits are needed in the parking lot. See attached picture at the end of this letter.
2. There are ten rows of parking in the DR Byen Parking lot, and there is a ticket machine located by the entrance of every single row of parking (see attached pictures below).

1 and 2 give the impression to the driver that DR Byen is a “BETALINGSPARKERING”.

There are many signs that say “BETALINGSPARKERING” around the DR Byen parking lot. As of May 28, I counted more than 50 “BETALINGSPARKERING” signs. The “BETALINGSPARKERING” signs look similar to the “RESERVERET” sign that apparently was posted a few parking spots away from where I parked on March 26. The “BETALINGSPARKERING” signs can be seen near the ticket machines in some of the pictures of the parking row entrances that I have included below.

From a little distance, the “RESERVERET” sign can be mistaken as just another “BETALINGSPARKERING” sign. That appears to be what happened to me, judging from the pictures that Q-Park submitted in their letter dated May 27, 2019.

I observe here that it is a common practice among parking lot operators to post “reserved” signs in front of every single parking spot that is restricted (by permit or otherwise). This provides an immediate warning to drivers to stay away from these parking spots. I would point out that Q-Park actually does this too at DR Byen. In Row 6, there are several parking spots that are individually marked as “reserveret” (see the last picture in this document).

The parking spot where I parked was not individually marked as restricted. The “reserved” sign was posted a distance away from where I parked and looked similar to the “BETALINGSPARKERING” signs posted elsewhere in the parking lot.

As of May 28, there were no “RESERVERET” signs at all at the DR Byen parking lot. Apparently, Q-Park must have changed the parking rules since March 26. Also, in Q-Park’s first response to my complaint, they wrote that “Please notes that you can only park here that day with a permit from DR. you cannot park here that day with a ticket.” (my emphasis in bold)

I would therefore ask Q-Park to explain if a “permit from DR” was only temporarily needed on March 26. Were the parking rules and posted signs changed on March 26, or on another date close to March 26? Was a permit needed on March 25 and March 27?

(se foto)

Ticket Machines by each of the 10 Rows of Parking (taken May 28, 2019)

(se fotos)

Reserved parking spots in row 6 at DR Byen

(se foto)

..."

" ...

Hi, as I stated in my previous comments on May 28, I will again kindly request Q-Park to please explain if the parking rules and posted signs were changed in any way on March 26 in the DR Byen parking lot. My impression is that the entire DR Byen parking lot is normally operated as a "betalingsparkering" and a permit is not required. I have also emailed DR Koncerthuset today with this question, as Q-Park has yet to respond to my last comments.

..."

" ...

Thank you to Q-Park for clarifying the parking situation on March 26 at the DR Byen parking lot. Below I will state my perspective and understanding of the permanent parking rules in place at DR Byen, and the temporary changes that were made to the rules on March 26.

The DR Byen parking lot is normally operated as a "betalingsparkering":

1. The road leading into the DR Byen parking lot has a large sign that says "BETALINGSPARKERING" (see picture in my letter dated May 28).
2. There are ten rows of parking in the DR Byen Parking lot, and there is a ticket machine located by the entrance of every single row of parking (again, see attached pictures in my letter dated May 28).
3. There are roughly 50 rectangular signs with a black background posted around the parking lot. I submitted a close-up picture of one of these signs on May 7 ("Picture of sign at DR Byen") when I first submitted my complaint to Parkeringsklagenævnet.
4. Every single one of those black rectangular signs says "BETALINGSPARKERING". These signs do not convey any specific information about where you can park, in relation to the sign. They simply say "Parkering kun tilladt i afmaerket P-bås."
5. Certain spots in the parking lot are restricted from parking. Every single one of the restricted spots is individually marked as restricted (for handicap access, MC, ELBIL, or "Reserveret DR Ejendomme & Service").
6. All the spots that have not been individually marked as restricted are available to use for pay parking.

On March 26, the day when I received my parking ticket, Q-Park changed the parking rules in the DR Byen parking lot. I will note the following regarding these changes on March 26:

1. In the early morning of March 26, Q-Park covered up several of the black rectangular signs that say “BETALINGSPARKERING” and replaced them with similar looking signs. The new signs that were placed over the “BETALINGSPARKERING” signs had roughly the same rectangular size and shape, the same black background and the same white font. Images of the new signs were submitted by Q-Park on May 27, in Bilag 1 and Bilag 2 in their letter.
2. From a distance, the “RESERVERET” signs that Q-Park put up on March 26 look very similar to the “BETALINGSPARKERING” signs that they covered up.
3. Unlike the “BETALINGSPARKERING” signs, the new signs did convey specific information about restrictions. More specifically, the signs said “RESERVERET” and “GAELDER HELE RAEKKEN”, with arrows pointing left and right. This had the effect of blocking off an entire row of parking spots as “RESERVERET”, directly in front of the location of the sign.
4. An immediate impact of the temporary change was a reduced protection for drivers. On a normal day, all the restricted spots are individually marked as restricted. On March 26, when the new restrictions were posted, the restrictions were posted a material distance away from most of the restricted parking spots. Also, the restrictions were posted on signs that looked very similar to the “BETALINGSPARKERING” that are normally present in the parking lot, and they were placed in the exact same location as the “BETALINGSPARKERING” signs.
5. Q-Park did not provide any advance warning prior to March 26, that the parking rules would change on that date. There were no signs posted in DR Byen prior to March 26 to alert drivers to the change.
6. There were no warnings or notices posted on the ticket machines on March 26 to alert drivers that the tickets would be useless in a part of the parking lot that day.
7. Q-Park mentioned a “vejledning om de ændrede vilkår ved indkørslen” in their letter on June 27. The picture evidence from March 26 that Q-Park submitted as evidence did include a picture of the “indkørsel” (see Bilag 5) but the image is too blurry to be able to read the sign in the middle of the road.

Lastly, I note that Q-Park said that “Det kan ikke pålægges selskabet, at der ved midlertidig skiltning skiltes ved hver eneste plads.” I don’t know whether Danish law says anything about how restricted parking spots should be labeled in a “betalingsparkering”, but I will reiterate here that the temporary rule change on March 26 made it more difficult for drivers to avoid restricted spots than is normally the case. On a regular day, a driver can just park in any spot that is not individually marked as restricted and buy a ticket.

Also, it appears that Q-Park is saying that they should be given additional flexibility in how the parking rules are posted, if the rules are only temporary. I would question that argument and suggest that the opposite must be the case.

When the parking rules are changed on a temporary basis, a parking operator should expect that the changes could cause confusion among drivers who park regularly in the parking lot (as it did for me). This is especially the case when the rules are changed without advance warning, and new restrictions are introduced by essentially just changing some parts of the text on existing signs.

Parking operators should reasonably take extra care about how they post the parking rules when parking rules are changing, to ensure that that the temporary rules are sufficiently communicated to parkers. In this particular case, since the new rectangular signs that were posted on March 26

were so similar to the signs that are posted on a permanent basis, Q-Park should have realized that there was a material risk that some drivers would not notice that the signs had changed.

...”

Indklagede har særligt anført følgende:

” ...

Selskabet bemærker indledningsvist, at der er tale om parkering på et offentligt tilgængeligt privat område, og at området derfor er underlagt privatretlige regler, hvorefter der kan pålægges kontrolafgift, såfremt dette er tydeligt tilkendegivet.

Klager har ved parkeringen indgået en stiltiende aftale med selskabet og accepteret de skilte vilkår. Det er herefter klagers ansvar, at vilkårene for området, hvor parkeringen foretages, er overholdt. Klager har oplyst, at der blev betalt i automaten, men det område af pladsen, hvor klager parkerede, kan der kun parkeres med P-tilladelse. Det kan ikke anses som en undskyldelig omstændighed, at klager holder på pladsen hver dag og havde betalt for parkering – det er klagers ansvar at gøre sig bekendt med den aktuelle skiltning på området, hvor parkeringen foretages. Skiltet med vilkårene er placeret få meter fra den P-bås klager parkerede i (se bilag 1, billede 1). Der er ligeledes ved indkørslen til området opsat skilte, der angiver, at regler og vilkår fremgår af skiltningen på pladsen (Bilag 5). Det er herefter klagers ansvar at orientere sig om skiltningen på pladsen og overholde denne.

Det må fastholdes, at klager må anses at have accepteret de skilte vilkår som fremgår af bilag 2 jf.

U.2014.1719H og at klager har orienteret sig på noget skiltning på et andet område af pladsen, kan ikke føre til et andet resultat. Der er netop varslet ved indkørsel, at vilkår skal ses på skiltning på området, da vilkårene er forskellige alt efter, hvor man parkerer. Når klager ikke gør sig bekendt med skiltningen på den ved parkeringen nærliggende skiltning, må denne også bære risikoen for, at der bliver pålagt kontrolafgift, når vilkårene ikke er overholdt.

På skiltet ved den række pladser, hvor klager parkerede, at der tydeligt påskrevet ”RESERVERET” samt både ved pilemarkering og påskriften angivet at vilkårene på skiltet gælder for hele rækken. Der kan således ikke, som det var tilfældet i U.2017.3101V, være tale om at skiltningen ikke er tilstrækkelig til, at det er klart hvilke vilkår, der gælder og på hvilket område.

På baggrund af ovenstående bemærkninger anser selskabet kontrolafgiften pålagt retmæssig, hvorfor kravet herom fastholdes.

...”

” ...

Selskabet bemærker, at der ved særlige arrangementer i DR-byen bliver reserveret en større del af pladsen til parkering med P-tilladelse. Den midlertidige skiltning, der angiver disse ændrede vilkår bliver sat op mellem 00.00 og 06.00. Holder der, når skiltningen sættes op, køretøjer uden tilladelse, vil disse blive tildelt elektronisk tilladelse. Dagen hvor kontrolafgiften er givet, blev den midlertidige skiltning sat op kl. 05.00. I tillæg til skiltning ved pladserne, bliver der ligeledes ved disse lejligheder opsat skiltning ved indkørsel til pladsen med vejledning om, at parkering til venstre (hvor klager parkerede) kræver P-tilladelse og parkering til højre kan ske mod betaling eller med P-tilladelse. Denne skiltning sættes op over den normale skiltning omkring betalingsparkering, hvorfor denne ikke har været synlig da klager kom til området denne dag.

Selskabet bemærker i øvrigt, at pladserne, som klager henviser til på række 6, er fast reserveret uanset særlige arrangementer. Det kan ikke pålægges selskabet, at der ved midlertidig skiltning skiltes ved hver eneste plads. En vejledning om de ændrede vilkår ved indkørslen og ændring af den almindelige skiltning på pladsen må således anses som tilstrækkelig og det skal fastholdes, at det er klagers ansvar at orientere sig om skiltningen og vilkårene på disse ved hver parkering.

Vi henviser i øvrigt til vores bemærkninger af 27. maj 2019.

...”

SAGENS DOKUMENTER:

Parternes indlæg og bilag.

PARKERINGSKLAGENÆVNETS BEGRUNDELSE OG RESULTAT:

Af skiltningen på det benyttede parkeringsområde fremgår, at hele rækken med båse var reserveret, og at parkering alene var tilladt med gyldig Q-Park tilladelse.

Køretøjet er observeret af parkeringsvagten uden gyldig Q-park tilladelse, men med en p-billet til et andet parkeringsområde.

Klageren har oplyst, at han var af den opfattelse, at man kunne betale for at holde på hele området, idet man efter indkørsel til området passerer et skilt med overskriften ”BETALINGSPARKERING”.

Klagerens køretøj var parkeret umiddelbart til venstre for skiltet med parkeringsvilkårene om anvendelse af p-tilladelse. Skiltet var forsynet med pile mod venstre og højre. Nævnet lægger til grund, at dette skilt var et fast skilt uanset særlige arrangementer.

Skiltningen er tilstrækkeligt tydelig til, at klageren ved udvisning af almindelig agtpågivenhed kunne have gjort sig bekendt med parkeringsvilkårene på området.

Herefter, og da bilisten ikke foretog parkering i overensstemmelse med de skilte vilkår, er Q-PARK OPERATIONS DENMARK A/S berettiget til at opretholde kravet om klagerens betaling af kontrolafgiften.

PARKERINGSKLAGENÆVNETS AFGØRELSE:

Q-PARK OPERATIONS DENMARK A/S er berettiget til at opretholde kravet om betaling af kontrolafgiften på kr. 510,-.

Klageren skal betale beløbet til Q-PARK OPERATIONS DENMARK A/S, som sender betalingsoplysninger til klageren.

Klagegebyret tilbagebetales ikke til klageren.

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 på www.domstol.dk, www.advokatsamfundet.dk og/eller eget forsikringselskab om eventuel retshjælpsforsikring.

På Parkeringsklagenævnets vegne

Mette Søgaard Vammen
Nævnensformand