

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer: 2016-0139

Klageren: XX
2100 Kbh. Ø

Indklagede: Metroselskabet I/S v/Metro Service A/S
CVRnummer: 21 26 38 34

Klagen vedrører: Kontrolafgift på 750 kr. grundet manglende check-ind på rejsekort.

Parternes krav: Klageren ønsker kontrolafgiften annulleret
Indklagede fastholder denne

Ankenævnets sammensætning: Nævnensformand, landsdommer Tine Vuust
Asta Ostrowski
Torben Steenberg
Bjarne Lindberg Bak
Alice Stærdahl Andersen

Ankenævnet for Bus, Tog og Metro har på sit møde den 6. december truffet følgende

AFGØRELSE:

Metroselskabet I/S v/Metro Service A/S er berettiget til at opretholde kravet om klagerens betaling af kontrolafgiften på 750 kr.

Klageren skal betale beløbet til Metroselskabet I/S v/Metro Service A/S, som sender et girokort 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 på www.domstol.dk, www.advokatsamfundet.dk og /eller eget forsikringssselskab om eventuel forsikringsretshjælp.

SAGENS OMSTÆNDIGHEDER:

Klageren, som er herboende og engelsktalende, rejste den 1. juni 2016 med metroen. Inden hun steg på metroen, glemte hun at checke sit rejsekort ind. Efter at metroen havde forladt Christianshavn st., var der kontrol af klagerens rejsehjemmel, hvor hun foreviste sit rejsekort, og da dette ikke var checket ind, blev hun klokken 11:30 pålagt en kontrolafgift på 750 kr. for manglende check-ind.

Stewarden har på den elektroniske kontrolafgift noteret:

”Pax var helt vild slog ud efter mig ville ikke skrive noget”

Klageren anmodede den 16. juni 2016 Metro Service om annullering af kontrolafgiften og anførte til støtte herfor følgende:

I am writing to explain that my fine no. 0 [redacted] on the Metro system for not checking was a clear, and unusual instance of forgetfulness. I am a regular, long-time user of the Metro. I have a very good history of paying for my rides on a daily basis. I am attaching my payment history to this message as a pdf file. I wish to pay for the ride between Kongens Nytorv and Islands Brugge, plus a small extra fee. Please annul the fine of 750, as I cannot afford this unreasonable amount.

”

Metro Service fastholdt den 22. juni 2016 kontrolafgiften med henvisning til selvbetjeningsprincippet, samt at klageren ikke havde foretaget korrekt check-ind på sit rejsekort.

ANKENÆVNETS BEGRUNDELSE:

Ankenævnet lægger til grund som oplyst af klageren, at hun glemte at checke sit rejsekort ind. Det fremgår af rejsekort rejseregler, at rejsekort skal checkes ind ved rejsens begyndelse, og at det er passagerens eget ansvar at være checket korrekt ind.

Kontrolafgiften for manglende check-ind blev derfor pålagt med rette.

Dette er et område med stor mulighed for omgåelse af passagerens pligt til at sørge for betaling af sin rejse, hvis det accepteres, at der er checket ind på rejsekortet, uanset at dette ikke er registreret på kortet eller i Back Office. Som følge af det anførte, finder ankenævnet, at der ikke har foreligget sådanne særlige omstændigheder, at klageren skal fritages for kontrolafgiften.

Der er ikke i lovens tekst pligt for trafikvirksomhederne til at differentiere i kontrolafgiftens størrelse afhængigt af baggrunden for udstedelsen.

RETSGRUNDLAG:

Ifølge § 2, stk. 1, jf. § 3 nr. 3 i lovebekendtgørelse nr. 686 af 27. maj 2015 om lov om jernbaner, gælder loven også for metroen. Af § 14 stk. 1, fremgår jernbanevirksomhedernes adgang til at opkræve kontrolafgift og ekspeditionsgebyr for passagerer, der ikke foreviser gyldig rejsehjemmel

(billetter og kort). Jf. § 14 stk. 4, fastsætter transportministeren nærmere regler om jernbanevirksomhedens adgang til at opkræve kontrolafgift og ekspeditionsgebyr, jf. stk. 1.

I henhold til § 4 i bekendtgørelse nr.1132 om kontrolafgifter af 08. september 2010, fastsætter jernbanevirksomheden bestemmelser om kontrolafgift i forretningsbetingelserne.

Trafikselskaberne i Hovedstadsområdet har vedtaget fælles rejseregler, hvori hjemmelen til udstedelse af kontrolafgift fremgår. Det anføres således bl.a., at passageren skal have gyldig rejsehjemmel til hele rejsen, og at denne skal kunne vises frem for kontrolpersonalet under hele rejsen, ved udstigning, i metroen indtil metroens område forlades, og i S-tog og lokalbanetog indtil peronen forlades.

Passagerer, der ikke på forlangende viser gyldig billet eller kort, herunder korrekt ind-checket rejsekort, skal betale en kontrolafgift på 750 kr.

Fra www.rejsekort.dk

Når du checker ind eller ud, vil du høre én af de tre lyde, der er vist herunder.

Til hver lyd findes forskellige skærmbeskeder, som vil forklare hvad lyden betyder.

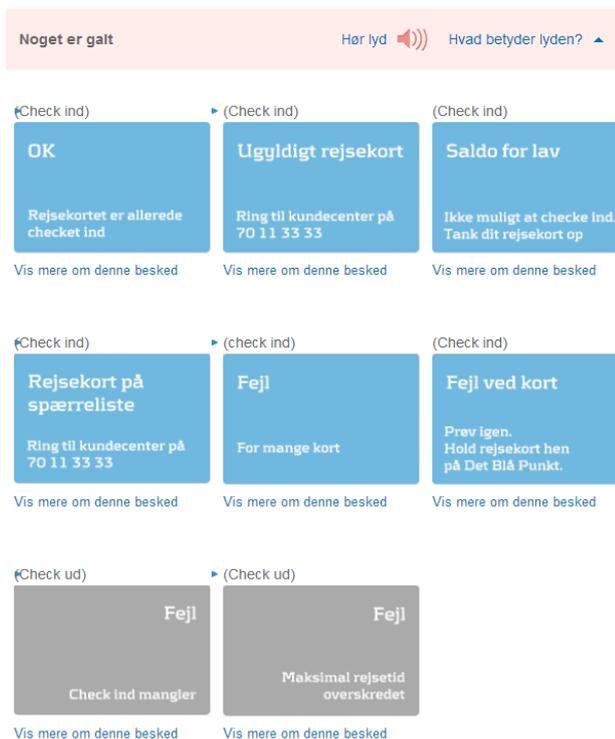
▶ **Alt er OK** Hør lyd  Hvad betyder lyden? ▲

Disse skærmbeskeder vises på kortlæseren, når du hører lyden for

◀(Check ind)	▶(Check ind)	(Check ud)
		
Vis mere om denne besked	Vis mere om denne besked	Vis mere om denne besked

▶ **Vær opmærksom** Hør lyd  Hvad betyder lyden? ▲

◀(Check ind)	▶(Check ind)	(Check ud)
		
Vis mere om denne besked	Vis mere om denne besked	Vis mere om denne besked



PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører følgende:

" I am a highly responsible person. I have many responsibilities as a professional in Copenhagen, and I use the Metro responsibly. I have a reliable digital record of check-ins & check-outs, but because I am new to Denmark, I find it easy to forget. I am used to transportation systems with entry gates (like in England, or in the Netherlands), and the punishment fee with an 'open' system is quite threatening. This fee does not help or deter people from 'forgetfulness' and a fine of 750 DKK is not proportional nor does it reflect 'irresponsibility'. A much better electronic system is needed for occasional forgetfulness, instead of 'policing' people like they are criminals. I really want you to consider reducing or annulling my fine, and working towards creating a digital system that is fair to the public. It would be more fair to give Metro officers digital devices that allow us to check in on the train, and take a small fine from our digital cards. Good people deserve to have a better system!"

Indklagede anfører følgende:

" Like all other means of public transportation in the greater Copenhagen area, the Copenhagen Metro employs a self-service system, where the passenger is responsible for being in possession of a valid ticket, for the entire journey, before boarding the train. Passengers must be able to present a valid ticket on demand to the ticket inspectors. When using a rejsekort this must be checked in before boarding the metro.

In cases where passengers are not able to present a valid ticket or rejsekort, a fare evasion ticket will be issued, which is currently DKK 750, - for adults. This basic rule is a prerequisite for the self-service system that applies to travel by public transport. The above mentioned information is

available on www.m.dk as well as on our information boards which are placed at every station. The information wall contain travel information in both English and Danish.

We must point out that we do not take into consideration whether the lack of a valid ticket is due to a conscious or unconscious act. Since we want to treat all passengers equally, we only consider the fact that it is the customer's responsibility - before boarding the train - to secure a ticket or a correctly checked in rejsekort, which can be presented on demand.

Unfortunately, we do not have fines of differentiated rates, depending of the reason for not being in possession of a valid ticket. Neither is it possible to show documentation of earlier regular purchase.

As the complainant was not able to present a valid ticket (checked in rejsekort) when asked for we find the fare evasion ticket correctly issued and maintain our claim of DKK 750,-."

Hertil har klager anført at:

" I am still concerned about my Metro fine of 750 DKK. I see this as being a very unfair rate for a regular passenger to pay, especially if he or she is a reliable user of the Metro service. I wish to further my complaint, and I am inserting a few arguments in between the notes that were given to me by a Ms. Ghita Nielsen:

>>Like all other means of public transportation in the greater Copenhagen area, the Copenhagen Metro >>employs a self-service system, where the passenger is responsible for being in possession of a valid >>ticket, for the entire journey, before boarding the train.

>>Passengers must be able to present a valid ticket on demand to the ticket inspectors. When using a >>rejsekort this must be checked in before bordering the metro. In cases where passengers are not able >>to present a valid ticket or rejsekort, a fare evasion ticket will be issued, which is currently DKK 750, - >>for adults.

I understand how this self-service system works, and I wish to confirm again that I know the rules. I ride the Metro regularly and I normally always follow these rules. However, when a person is expected to interact with an open (non-gated) self-service transportation system, I think that it is important to receive some type of 'customer service' in the event that there is an error, mishap, or moment of 'forgetfulness' regarding a check-in or a check-out.

Since I had a rejsekort in my possession and since it had money encrypted on it, I do not see why the "ticket inspectors" needed to escort me off the Metro, check my passport, ask me to complete a paper-based form and issue an outrageously high 750 DKK fare-evasion fine ticket by regular post. In my view, the work of these inspectors seems to be both old-fashioned and outdated for what is now a digitalized travel system. Police inspectors were useful for paper-based tickets, but not for a digital system that is designed to keep track of the travel activities of users who possess digitalized cards.

Would it not be more helpful to Metro customers to have a friendly interaction with a travel card inspector, who is able to deduct money directly from a valid card for a specific journey, and include a small fine as a deterrent? Does a fine even serve as de-

terrent anyways? With an open (or non-gated) self-service system like the one in Copenhagen, I am sure that the current fare-evasion system works in favor of the Metro as a money-making operation, and that it is less useful to the regular traveler as a deterrent from errors. In any case, I do not object to fines entirely. I simply believe that the current fare-evasion ticket system regarding check-in behavior is meant to punish people unnecessarily. Again, the Metro's approach to issuing fare-evasion fines is old-fashioned, abusive, and inappropriate within the context of a digitalized system, which does and can keep track of regular travel activity.

>>We must point out that we do not take into consideration whether the lack of a valid ticket is due to a >>conscious or unconscious act. Since we want to treat all passengers equally, we only consider the fact >>that it is the customer's responsibility - before boarding the train - to secure a ticket or a correctly >>checked in rejsekort, which can be presented on demand.

A customer (like me) who is in possession of a valid travel card, with a photograph and ID, and a previous record of regular check-in and check-out journeys *IS* showing that she is responsible.

The Metro system should recognize that there *IS* a difference between: a) customers who are irresponsible and consciously want to evade a travel fare, and b) customers who are responsible but can be occasionally inaccurate when using an open self-service system. Human beings forget sometimes, and the forgetful or inaccurate customer does not deserve to pay 750 DKK. To 'matter-of-factly' state that no consideration is given regardless of whether or not a 'fare-evasion' situation is conscious or unconscious is immoral. It is an immoral approach to equality and demonstrates a lack of willingness on the part of the Metro to establish an up-to-date, value-based system designed to give people the customer service that they deserve. "

Til dette har indklagede svaret:

"The complainants states that it is a very unfair rate for a regular passenger to pay.

As mentioned we do not have a different rate due to the reason for not being able to present a valid ticket.

The fare evasion ticket for not being able to present a valid ticket is DKK 750,- whatever the reason might be.

At all our stations information boards can be found on the **Trafikinformation / Traffic information** it is stated:

Metroen kører alle dage og nætter

Dag: 2-6 minutter mellem togene.
Nat: 10-20 minutter mellem togene.
Længere rejsetid kan forekomme ved:
– omstigning mellem de to metrolinjer M1 og M2
– planlagte vedligeholdelsesarbejder
– driftsforstyrrelser
Eventuelle ændringer i driften vil fremgå af www.m.dk.

Kontrolafgift

Husk det er dit ansvar inden påstigning at have en gyldig billet eller kort til rejsen for både dig og dine eventuelle ledsagere.
Manglende billet eller kort (samt rejse i spærretiden for dem der rejser på pensionistkort eller med cykel) medfører pr. 1. januar 2013 en kontrolafgift på 750 DKK pr voksen, 375 DKK pr barn/hund og 100 DKK pr cykel og videre rejse i spærretiden er ikke tilladt.
Der henvises til www.m.dk samt rejsereglerne for gældende satser på kontrolafgifter og yderligere information.

Børn

Op til to børn under 12 år kan rejse gratis i Metroen, hvis de følges med en betalende voksen.

Rejser børn under 16 år alene med Metroen, skal de have en børnebillet.

Hunde

Din hund rejser på børnebillet. Dog rejser mindre hunde gratis, når de transporteres i en taske.

Cykler

Cykler må medbringes, når du har købt en cykelbillet, og når rejsen foretages uden for spærretiden – dvs alle hverdage kl. 7:00-9:00 og kl. 15:30-17:30.
I juni, juli og august må cyklen medtages på alle tidspunkter.

Rejsende med Rejsekort

Når Rejsekort benyttes i Metroen: **Check ind** ved rejsens start.

Check ind er registreret på chippen i dit rejsekort, når kortlæseren kvitterer med et "ding" og et OK på skærmen.

Hvis du fjerner dit rejsekort for hurtigt fra **Det Blå Punkt**, registreres **Check ind** ikke. Kortlæseren kvitterer med et "dong" og meddelelsen **Fejl. Provingen**.

Check ind hver gang du skifter transportmiddel.

Check ud ved rejsens afslutning. Hold dit rejsekort hen på **Det Blå Punkt**, indtil skærmen viser rejsens pris og et OK. Først da har du checket rigtigt ud.

Hvis du ikke foretager et **Check ind** ved rejsens start eller ved skift, har du ikke gyldig rejsehjemmel, og du kan risikere en kontrolafgift iht. gældende rejseregler.

Glemmer du at foretage **Check ud**, mistes forudbetalingen.

The metro operates 24/7

During daytime: 2-6 minutes between train departures.
During night: 10-20 minutes between train departures.
Longer travel time might occur
– when transferring from M1 to M2
– due to planned maintenance work
– due to operational disruptions
Any changes will be announced on www.m.dk.

Penalty

Remember it is your responsibility to have a valid ticket or travel card for both you and your potential companions. Lack of ticket or card and travelling during curfew (pensioners and/or bicycles) will per 1. January 2013 result in a penalty charge of 750 DKK per adult, 375 DKK per child/dog and 100 DKK per bicycle and onward travel in this period is not allowed. We refer you to www.m.dk and the travel rules for applicable penalty charges.

Children

Up to two children under the age of 12 travel for free in the Metro, if accompanied by a paying adult. Children traveling alone and under the age of 16 must have a children's ticket.

Dogs

Your dog must have a children's ticket. Smaller dogs travel for free in the Metro, if carried in a bag.

Bicycle

You can take a bicycle with you when you have bought a bike ticket, and when you travel outside curfew for bikes - that is all weekdays between 7:00-9:00 am and between 15:30-17:30 pm. In June, July and August, however, you can take your bicycle with you at all times, as long as you have a valid ticket also for the bicycle.

Travel card

When using a travel card in the Metro:

– Make a **Check-in** at the start of the trip on **The Blue Point**. **Check-in** is registered on the chip in your travel card, when the card reader returns a "ding" and an OK on the card reader screen.

– If you remove your travel card too quickly from **The Blue Point**, the chip is not registering your **Check-in**, and you will hear a "dong" and the message **Error. Please try again**.

– Make a **Check-in** whenever you change mode of transport

– Make a **Check-out** at the end of the trip and wait for the screen to show the cost of the trip and an OK.

If you do not make a **Check-in** at the start of the trip or when changing mode of transport, you do not have a valid ticket, and you risk getting a fine in accordance with applicable travel regulations.

If you forget to make a **Check-out**, you will lose the prepayment.

When a steward is issuing a ticket he or she always asked the passenger what the end destination is. In cases where the steward has not finalized the issuing of the fare evasion ticket when reaching the end destination the steward is of course expected to get off the train together with the passenger to finish the issuing.

The reason the steward ask for ID is to make sure that the person standing in front is the person he or she is pretending to be.

The paper-based form the complainant was asked to fill out is a slip where the passenger fills out cpr-no/date of birth, name, address etc. – see the example below:

CPR-nr.:	[REDACTED]	<p>Undertegnede kvitterer hermed for modtagelse af kontrolafgift med klagevejledning, udstedt i forbindelse med billetkontrol i Metroen. Kunder uden gyldig billet har pligt til at opgive fuldt navn, fødselsdato og adresse samt legitimere sig på fyldestgørende måde.</p> <p>I hereby acknowledge that I have received a fare evasion ticket (including guidelines on how to appeal it). Customers who are unable to present a valid ticket are obliged to state their name, date of birth and address. Furthermore, we may demand to see ID.</p> 
Navn:	[REDACTED]	
Adresse:	[REDACTED]	
Postnr.:	[REDACTED] By: [REDACTED]	
Underskrift:	[REDACTED]	

The complainant writes herself that it was a unusual instanced of forgetfulness.

There is – as we see it – no doubt that the complainant has entered the metro without a valid ticket which is why we find the fare evasion ticket correctly issued.

Klageren har afslutningsvist anført at:

“The complainant writes herself that it was a unusual instanced of forgetfulness. There is – as we see it – no doubt that the complainant has entered the metro without a valid ticket which is why we find the fare evasion ticket correctly issued”

As the complainant, I have also written a great deal about the moral implications of developing an electronic system for passenger check-ins and check-outs and the problems that can ensue with things like forgetfulness – especially the high cost to travelers who are easily forgetful.

Ghita Nielsen seems to be suggesting (above) that if a human ‘unusually’ forgets to lock their door in the morning and admits to having done so that he/she deserves to have valuable things stolen from their home. Why does the Metro system think that if people are unusually forgetful that they deserve be fined at such a high rate? 750 DKK is a huge fine to pay for a moment of forgetfulness, especially when there is electronic evidence to confirm the general ‘reliability’ of customers who subscribe to a client-tracking system.

I would therefore ask the appeals committee to take a stand and help passengers with their occasional moments of forgetfulness. This means establishing a correct punishment value linked to check-in “forgetfulness” and linking it to a lower rate. Admitting to being forgetful is not the same as saying that I agree with a punishment value of 750 DKK. A “humane” system would be one that will reduces the fine.. and distinguish between those who forget from those who are truly irresponsible and ready to cheat the Metro system.

When I write my argument, I would therefore respectfully ask that the appeals committee gives attention to this issue of the high cost of the fine. Again, 750 DKK is a significant amount for anyone to pay. It is a high price, and an inappropriate form of punishment, especially when the actual ride on that day that I received the fine was supposed to cost me 15 DKK. This huge price does cannot always deter responsible residents and citizens from forgetting to check in. Only a gated system, as there is in London, and the Netherlands, will create such a deterrence. The Metro staff should stop capitalizing on rules and start thinking more reasonably about honest customers.

På ankenævnets vegne



Tine Vuust
Nævnetsformand