

**AFGØRELSE FRA
ANKENÆVNET FOR BUS, TOG OG METRO**

Journalnummer:	2015-0151
Klageren:	XX København S
Indklagede: CVRnummer:	Metroselskabet I/S v/Metro Service A/S 21 26 38 34
Klagen vedrører:	Kontrolafgift på 750 kr. grundet manglende billet. Var applikation DOT mobilbilletter i uorden?
Parternes krav:	Klageren ønsker kontrolafgiften annulleret Indklagede fastholder denne
Ankenævnets sammensætning:	Nævnensformand, landsdommer Tine Vuust Alice Stærdahl Andersen (2 stemmer) Asta Ostrowski Torben Steenberg

Ankenævnet for Bus, Tog og Metro har på et møde den 23. februar 2016 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 da-gældende vedtægter § 26, stk. 4, 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 på www.domstol.dk, www.advokatsamfundet.dk og /eller eget forsikringssselskab om eventuel forsikringsretshjælp.

SAGENS OMSTÆNDIGHEDER:

Klageren rejste den 6. maj 2015 med metroen fra DR Byen til Fasanvej. Inden påstigningen forsøgte hun at købe en billet i applikationen DOT mobilbilletter. Da dette ikke lykkedes, steg hun ombord på metroen uden gyldig rejsehjemmel.

Efter metroen havde forladt Fasanvej, var der kontrol af klagerens rejsehjemmel, hvor hun klokken 09.32 blev pålagt en kontrolafgift på 750 kr. for manglende rejsehjemmel. På kontrolafgiften har stewarden noteret følgende: *"Kunne ikke købe billet paa app siden dr byen. Mente det var meget uretfærdigt og vil klage."*

Klageren anmodede den 11. maj 2015 Metro Service om annullering af kontrolafgiften og anførte blandt andet følgende:

"I used a "clippecard" that I have purchased on my phone by using the mobile app 2 zoner DOT "Mobilbilletter" for my trip. That morning I was standing at DR Byen metro stop and I was trying to "check in" for my trip on my phone plenty of times before entering metro. For some reasons the app did not react. But I had to go because I had a very important meeting at CBS.

Furthermore, I would like to inform you that the "location" setting was activated on my phone (it was green). I was not in metro or somewhere in the "basement". Therefore there were no any reasons for the app "Mobilbillett" not working.

All other apps on my phone were working properly that moment.

Finally, I decided to enter metro because I assumed it was not my fault that I was not able "to clip" my mobile "clippecard". I wanted to buy a single ticket for my trip before entering metro. But I realized that I forgot my wallet and my bankcard at home and I did not have any time to go home to pick it up, because I had to go to the meeting that I mentioned earlier. I assume if I had a traditional paper clippekort that I used many times before, I would not be in such a situation even though I forgot my money and my bankcard at home. Therefore it is very unfair. As a passenger I also expect that I should be able to rely on both: the mobile "clippekort" or the paper "clippekort". Both systems should be working properly. If they are not working, it is not passenger's fault. For example, if the machine at the station is broken and therefore a passenger cannot clip his clippekort, he should not enter metro, or what?

I think, if I paid money for that mobile card, it should be working properly. If it is not working, it is not passenger's fault. If you cannot fix such problems, in such a case you should not provide and take money from your customers for such apps. So, the customers would not be confused and would not have financial damage by getting the fines. I am a loyal passenger of Metro for quite many years. I assume you can see it in your system that I used to have a monthly card for approximately 10 years while living in Copenhagen. During all those 10 years I never got a fine, because I always made it sure to have a ticket for my trip. I was never cheating.

Furthermore, I came extremely late to the meeting because the Metro officer took me out of metro and he was extremely slow to fill in the fine for me even though I was begging him to make it faster. I came late to the meeting and my meeting was totally damaged..."

Metro Service anmodede den 15. maj 2015 klageren om, at oplyse sit telefonnummer inden 10 dage.

Klageren kontaktede atter Metro Service den 21. maj 2015. Udover at oplyse sit telefonnummer anførte hun følgende:

"Furthermore, I would like to inform you that I was trying to use the same app today, on the 21st of May 2015 around 16.30 and 17.00 and it DID NOT work again. Luckily, I had my Rejsekort with me therefore I managed to check in for the trip.

My trip started at DR Byen metro stop. This is the second time the app did not work at DR Byen Metro station. I would like to assure you that the "Location" service was turned ON on my phone. Since it did not work, I restarted my phone and tried it again many times. But I had the same problem again. The app is just not working properly.

Since I see that you do not believe that the app is not working properly, I would like to arrange a meeting with somebody from metro service at DR Byen metro stop, in order to prove that the app DOES NOT work at this station.

Could you, please, find a right person and arrange a time for me?

If you refuse to arrange a meeting with me, in such a case I will interpret that Metro service is avoiding their responsibilities and they are avoiding to be proved that their service is not working properly..."

Den 11. juni rykkede klageren for svar.

Metro Service fastholdt den 24. juli 2015 kontrolafgiften og anførte blandt andet 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 before boarding the train. It is your responsibility to ensure that your ticket or clip card is correctly stamped and that it is valid for the entire journey. Furthermore, you must be able to show the ticket or card in case of a ticket inspection. If you cannot, a fine will be issued. The SMS-ticket travel rule book states that the passenger must be in possession of the ticket before boarding the train. For further information, see www.1415.dk In this case, the ticket was received after you boarded the train. Therefore we maintain that the fine was issued on the correct grounds.

We have contacted Unwire, who could inform that there has not been any errors on the system at the time in question. Yellow call points can be found on all of our ticket vending machines as well as in several other places in every one of our stations. These call points can be used if the passenger requires assistance or guidance. The call point will connect the passenger directly to an operator in our control tower, which is manned 24 hours a day...

It is not a worthy excuse to be in a hurry. We find it difficult to handle your problem with your App, since you do not describe what may cause the problem. Today we have physically made a trip to DR Byen station, in order to check what could be wrong.

Here it was not a problem using the App, when we tried to buy a ticket at the station. We have also been in contact with Unwire, who could inform, that on May the 6th 2015 during 9am-9:30am, they sold 1200 mobile tickets.

It is of course our responsibility to make sure, that all equipment is functioning and working correctly.

You are welcome to send us a description of the problems you have. This will have no effect on your fine, however."

ANKENÆVNETS BEGRUNDELSE:

Det fremgår af de fælles rejseregler for Hovedstadsområdet, at det som udgangspunkt er passagerens ansvar at sikre sig gyldig rejsehjemmel.

Klageren kunne ved kontrollen i metroen den 6. maj 2015 ikke forevise gyldig rejsehjemmel, idet hun inden påstigning ikke havde kunnet købe en mobilbillet i applikationen DOT mobilbilletter. Kontrolafgiften blev dermed pålagt med rette.

Klageren har indsendt videooptagelse af, at hendes telefon ved opstart af applikationen viste en fejlmeddelelse: "1006" med teksten: "*Der kunne ikke oprettes forbindelse til serveren. Prøv igen!*". Derudover har hun indsendt videooptagelse af nogle meddelelser på skærmen ved forsøg på køb af billetter. Det er dog ikke muligt at tyde disse meddelelser.

Metro Service har oplyst, at der ifølge Unwire ikke har været problemer med applikationen den pågældende morgen.

Således som sagen foreligger oplyst, finder ankenævnet det overvejende sandsynligt, at den manglende forbindelse til serveren beroede på forhold ved telefonens opsætning/netværksforbindelse eller lignende og ikke beroede på en fejl i selve applikationen.

Klageren har henvist til problemer med applikationen DOT mobilperiodekort, og at en veninde har fået eftergivet en kontrolafgift hos DSB. Ankenævnet bemærker, at det er to forskellige applikationer, og fejlen i applikation mobilperiodekort efter det oplyste vedrørte manglende besked til brugeren om at forny mobilperiodekortet.

Klageren har oplyst, at hun ikke forsøgte at købe gyldig rejsehjemmel via andre billetteringsmuligheder, da hun havde glemt sin pung derhjemme. Dette er imidlertid ikke en sådan særlig omstændighed, der gør, at klageren skal fritages for kontrolafgiften ved rejse uden gyldig rejsehjemmel.

På denne baggrund finder ankenævnet, at der ikke foreligger sådanne særlige omstændigheder, at klageren skal fritages for betaling af kontrolafgiften.

RETSGRUNDLAG:

Ifølge § 2, stk. 2 i dagældende lovbekendtgørelse nr. 1249 af 11. november 2010 om lov om jernbaner, gælder loven også for metroen. Af § 23 fremgår det, at transportministeren fastsætter regler om jernbanevirksomhedernes adgang til at opkræve kontrolafgift og ekspeditionsgebyr for passagerer, der ikke foreviser gyldig rejsehjemmel (billetter og kort).

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. Mobilbilletter skal være modtaget på den mobile enhed før påstigning.

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

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren har anført at:

"This is the third complaint that I write due to the fine number: xxxxxx which I received on the 6th of May, 2015 in Metro. I have written a complaint to Metro Service and I have received a response letter from Metro Service regarding the fine. It states that I am supposed to pay the fine (750 DKK) and it argues that Metro Service have contacted Unwire due to my SMS-ticket?.

First of all, I would like to inform you that the issue was not due to SMS-ticket but due to the App DOT Mobilbillet? which was not working that morning. I was not using SMS-ticket because I even did not know that such a ticket exists.

I was explaining that the App DOT was still not working properly other days and therefore I wanted to meet somebody from Metro Service in order to prove that it was not working and I was not able to use it. But for some reasons I never received any response to my second complaint. (...) my second complaint which I submitted online to Metro Service on the 21st of May, 2015 but I never received any response to it until now...

Since Metro Service is avoiding their responsibilities and they do not want to arrange a meeting with me, so, I could prove the App DOT is not working, I have made 3 videos myself in order to prove it that the App is not working. I could present them if needed.

Furthermore, my Danish friend had the same case as me on the 5th of May, 2015. Her DOT App was not working as well therefore she got a fine in the DSB train. She called DOT and explained her problem. DOT proved her that they experienced plenty complains from passengers those days that had similar problems as she had, they approved her that the App DOT was not working properly those days, and therefore she should not pay the fine. Afterwards she wrote a complaint to DSB and finally she received a response from DSB that the App DOT was not working and therefore it was not her fault. Therefore she should not pay the fine.

I know that the App DOT is valid in all kinds of transport: DSB trains, Metro, Bus etc. Her case proves that the App DOT was not working.

Furthermore, she entered the train even though she did not have the ticket. Both, my App and her App did not work, therefore both of us got fines. At the end she is not supposed to pay the fine but I am supposed to pay it even though our cases are the same and both of us did not have tickets because our apps did not work. Could I ask why the same case was interpreted so different?

I also have videos which prove that the App DOT was not working other days as well. Therefore I believe that my fine should be cancelled as well because the App DOT was not working and it was not my fault.

I would like to inform you that Metro Service ignored my second complaint. I was trying to submit the third complaint but their system does not accept more complaints from me.

Furthermore, they keep saying that it is my responsibility to have a ticket before entering metro. But what about their responsibility who are providing the app that is not working when needed? I have purchased a product (a mobile klippekort) that I cannot rely on. And because of their bad product I got a fine.

I am planning to go further with this case, therefore I do insist to get your comment on my question above. I am also curious why it was ignored until now?

Furthermore, I am using Samsung smartphone. Therefore I went to Samsung support center in Copenhagen. I presented my phone to the people working there and asked if my phone had enough memory for the app to work properly. They checked my phone and I got a response that the phone had more than enough of memory for the app to be able to work. They said, the phone was working properly and the problem was not with my phone. They told me that the problem was actually with the app. They promised to provide me a document about this case, if needed.

The day I was not able to check in with my app for the trip, I did not know about the options of the yellow help buttons at Metro stations. Therefore I did not call for help.

I see in your last response that Metro service is willing to send a person for a meeting, so, I could present the videos. My answer is Yes, I WOULD LIKE TO GET SUCH A MEETING. Furthermore, I would like to present those videos to some independent person who is not working for Metro services. Because now I think, that such an investigation will not be objective enough, since I experience Metro's service attitude towards my case and their ignorance.

I think, I would also like to present those videos online, if possible? So, they could be attached to this case as an evidence that the app was not working.

Indklagede har anført at:

"As other means of public transportation in the Greater Copenhagen area, the Metro is a self-service system, where it is the responsibility of the passenger to ensure holding a valid ticket, and being able to present it upon request.

In cases where a valid ticket cannot be presented upon request, the passenger must accept a fine, which currently is 750 DKK. This basic rule is a premise for the self-service system used in the Metro. This information can be found in the common travel regulations found on www.m.dk as well as on the Information walls on all stations. The Information walls are all in both Danish and English language.

In the case in question the complainant claims the App did not react, which prevented her from purchasing her ticket. She claims that there is a problem using the App at DR Byen station.

We have visited DR-Byen st. ourselves, and did not find any problems with the app, and therefore we did not find it necessary to meet with the complainant.
The complainant now claims, that she has video evidence that the app was not working.

We are open for a meeting at the station with the complainant, if the Complaint board finds this relevant. However we are of the opinion, that the system worked perfect – and if there was a problem locally on her phone with either lack of memory or the like, we cannot be held responsible for this.

The complainant was aware that she did not had a ticket when boarding the train, and should therefore have tried to obtain another ticket, or call for assistance using our callpoints. Information about callpoints is available on all stations:

Contact and further information

You can get additional assistance, by using the yellow dial locations that you find on both platforms and in the trains or you can use the info button on the ticket vending machine.

Alternatively www.m.dk and the folder "Rejseregler" provide more information.



Henvendelser til Metroens kontrolrum kan ske fra opkaldsstedet – tryk INFO. Ved akut fare – tryk ALARM.

Inquiries to the Metro control room may be made from the call point by pressing INFO. In case of emergency, press ALARM.



Metrostationer og Metrotog er kameraovervågede af hensyn til de rejsendes sikkerhed og tryghed.

For passenger safety and security Metro stations and trains are under video surveillance.



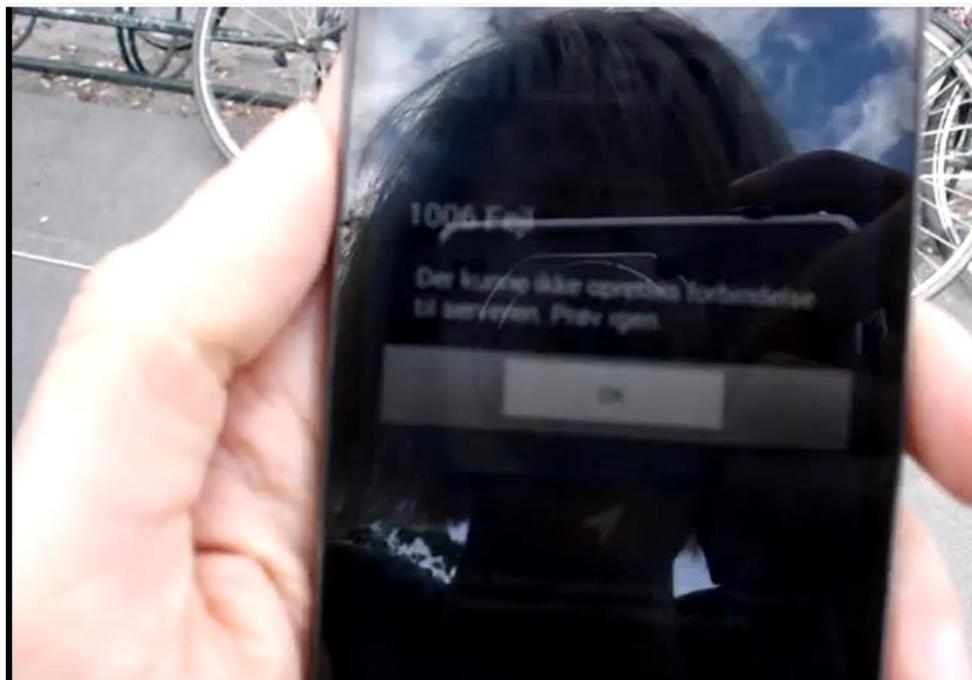
Rejser med Metroen kræver gyldig billet eller kort. Billetter eller kort kan købes i automater på alle stationer. Billetkontrol kan ske både under rejsen, ved udstigning og på stationen efter endt rejse. Ved manglende billet udstedes kontrolafgift efter gældende regler.

Travelling on the Metro requires a valid ticket or travel card. Tickets and travel cards are available from ticket vending machines at the stations. Ticket control may be performed during the journey, when alighting and at the station after the journey has ended. Passengers boarding a train without a valid ticket will be liable to pay a penalty fare.

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RELEVANTE BILAG:

Still-billede fra den ene af klagerens videoer:



På ankenævnets vegne



Tine Vuust
Nævnformand