

**AFGØRELSE FRA
ANKENÆVNET FOR BUS, TOG OG METRO****Journalnummer:** 2013-0393**Klageren:** XX
3450 Allerød**Indklagede:** Metroselskabet I/S v/Metro Service A/S
CVR: 21 26 38 34**Klagen vedrører:** Kontrolafgift på 750 kr. for manglende fornyelse af periodekort.**Ankenævnets
sammensætning:** Nævnformand, landsdommer Tine Vuust
Bjarne Lindberg Bak
Ingrid Dissing
Torben Steenberg
Asta Ostrowski**SAGSFREMSTILLING:****Klageren reklameret til indklagede:** Den 8. september 2013**Klagegebyr modtaget i ankenævnet:** Den 7. november 2013**Sagens omstændigheder:** Klageren rejste den 8. september 2013 med metroen fra Lufthavnen i zone 04. Som rejsehjemmel anvendte han et 7-zoners mobilperiodekort med zonerne 01 – 02 – 30 – 41 – 51 - 61 og 71 samt et 2-zoners klippekort til zonerne 04 og 03.

Mellem Lergravsparken st. og Christianshavns st. i zone 01 var der kontrol af klagerens rejsehjemmel, hvor det blev konstateret, at klagerens mobilperiodekort var udløbet den 6. september 2014. Klageren blev derfor pålagt en kontrolafgift på 750 kr. for manglende zoner.

Sammen dag anmodede han om annullering af kontrolafgiften og gjorde gældende, at det i reklamer for mobile periodekort fremgår, at applikationen sørger for, at når periodekortet er ved at udløbe, modtager man en meddelelse herom, men at han aldrig havde modtaget en sådan besked.

Metro Service fastholdt kontrolafgiften den 21. oktober 2013 med henvisning til selvbetjeningsprincippet, og at det er passageren selv, der er ansvarlig for fornyelse af periodekortet samt at huskefunktionen i applikationen ikke fritager passageren for dette ansvar.

Zonekort metroen:



Fra M.dk:

Hvilke fordele er der ved mobilperiodekort?

Der er mange fordele ved at bruge mobilperiodekortet:

- Når du har dit periodekort på mobilen, har du det altid på dig.
- Du kan nemt både købe og forny mobilperiodekortet via din smartphone.
- Du får automatisk en reminder, når dit mobilperiodekort er ved at udløbe.

Klageren: Ønsker kontrolafgiften annulleret og har til støtte herfor gjort følgende gældende,

“ My complaint is about my mobil periodekort app. As opposed to what DSB advertises (that the app sends out reminders to renew the card) I had never received a reminder to renew my monthly card. Only after I had complained to metro after the fine, I started receiving reminders, which I think is not fair, And as a consumer, I am complaining that their advertising is misleading and invalid. They should take responsibility for that. More details about what happened: I was going from the airport to Amagaer station on september 8, 2013, at the time I had a mobile periode kort of 7 zones- (from zone 1 to Allerød)(which was expired but I did not know since I was counting on receiving a reminder from the app but I never did)Usually when I go home from the airport, I clip a 2-zone clip on a blue card so that in addition of my mobile periodekort it would cover the trip. So when the controller came, I discovered that my mobil periodekort had expired and so he gave me a fine for traveling on too few zones. As the blue clip was not sufficient. DSB advertises that the app specifically sends out reminders to people so that they do not forget to renew their cards - which was one of the main reasons why I started using the app! Only after I complained about the fine to Metro, have I started receiving reminders. So the app was not reliable and they should take responsibility for that.”

"The problem is that I have not received any of the mentioned reminders on my app before I got the fine. Not 3, 2 or 1 days before the expiry of the ticket.

I actually never received any reminders ever since I started using the app until I submitted the complaint, they started appearing which I thought was strange.

The app has additionally proved to be faulty, as it crashed several times during that period when I got the fine.

Why I think the fine is unfair, is because it was advertised that the app will send a reminder to the user (when the ticket is about to expire) so that the user avoids paying fines.

Every body can be forgetful and forgets to renew his card, that's why I thought that an app which sends out reminders would be perfect. But alas the app did not do what it was advertised to do.

So I think it is faulty advertisement and that is why my fine is not fair."

"Yes the app started sending reminders but only after I complained that I was not receiving them (that was after I got the fine). It never sent me reminders before...

Plus the app was often faulty, halting and needing reinstallations so I imagine the reminder feature could also have been faulty.

My complaint is that they should not have advertised the reminder as a main feature if the feature was not working properly."

Indklagede: Fastholder kravet om betaling af kontrolafgiften og har til støtte herfor gjort følgende gældende:

"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. In cases where passengers are not able to present a valid ticket, a fine 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 also available in the folder Metro's travel rules (in Danish), which is available on www.m.dk as well as on our information boards which are placed at every station. The information boards contain travel information in both English and Danish. Our metro staff are trained to issue fines to all customers without a valid ticket. They do not distinguish between an intentional or unintentional mistake. They only check the validity of the ticket.

See below the text written in English from information boards placed at all stations:

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.

The customer received a fine after leaving Lergravsparken station, while travelling in the direction of Christianshavn station, which are both located in zone 1. When meeting the metro staff, the complainant showed a 2 zone clip card stamped once and validated in zone 4. The complainant was under the impression, that the 7 zone travel card was still valid, when stamping the 2 zone clip card, which under normal circumstances would give the complainant an additional ticket for 2 zones, had the travel card been valid. By itself the stamped clip card was only valid for 2 zones. The travel card on the App had expired 2 days previously. The complainant therefore only had a valid ticket for the 2 zones, starting in zone 4. When entering zone 1 the ticket was no longer valid.

As seen in the zone map below, it is evident that when travelling from zone 4 to zone 1, 3 zones are needed in order to have a valid ticket. Zone maps are available at every station, both on the information boards as well as above the ticket stamping machines. The point of reference is the "red zone", which is the zone where the journey begins. From there, the amount of zone rings (colours), including the one that contains the destination, are counted and make up the amount of zones that the ticket needs to be valid for. A minimum of two zones is required per passenger.

It is the complainants own responsibility to renew the card. A reminder service is just that, an extra service opportunity for the customer when using the App. The same rules apply to a period defined travel card whether or not it is purchased via the App or in paper form. The complainant informs us that because of this lack of a reminder he did not remember to purchase a new travel card.

The reminder service within the App works like this: 3 days before the card expires, a message will pop up on the phone when using the app. The App needs to be opened in order to receive the message. There is no text message reminder service (SMS) and therefore it can only be seen when opening the App on the phone. This message will also be shown 2 days as well as 1 day before the period defined travel card expires. The reminder is only shown once a day. When the

card is expired a message appears across the screen in red and states "udløbet" where it is clear that the card is expired.

We can see that the previous card was valid from the 08.08.2013 to the 06.09.2013. The next travel card was valid from the 12.09.2013 to the 12.10.2013. The fare evasion ticket was issued on the 08.09.2013.

See below the image sent of the complainants travel card where this message appears:



Zone map with travel starting in zone 4:



It is the complainant's own responsibility to ensure a valid ticket for the entire journey and that the travel card they are using has not expired. We therefore maintain the full amount of the fine dkk 750,-."

"We have contacted the supplier of the App, who replies that there have been no versions of the app on the market, without that reminder feature. However it works together with the time/date on the phone, and if that has been changed, the reminder service will obviously not work.

When the monthly pass was purchased, the end date was selected by the complainant himself, and as stated in our previous reply, the reminder service is nothing but a service, and it is still the passenger's responsibility to ensure having a valid ticket, before boarding the metro.

The complainant describes, that the reminders have started to come now. This supports our statement, that the App has not been faulty, as no version has been released, with a changed functionality regarding the reminder service..

Based on the above, we maintain our claim towards the complainant."

"Further to the latest comment from the complainant, we just want to stress, that there have not been added any feature to the App.

If the complainant experiences that the app suddenly sends reminders, the reason is more likely that the complainant did not allow the app to send push messages, and at some point has changed this.

This is to be done locally on the phone, and has nothing to do with the app itself."

BILAG TIL SAGEN:

Kopi af kontrolafgiften.
Kopi af parternes korrespondance.

ANKENÆVNETS BEMÆRKNINGER:

Retsgrundlaget:

Ifølge § 2, stk. 2, i lovekendtgørelse nr. 969 af 08. oktober 2009 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.

Det fremgår af Metroens rejseregler (forretningsbetingelser), at passagerer skal have gyldig billet, gyldigt stemplet klippekort eller gyldigt månedskort fra rejsen begynder. Billet eller kort skal opbevares under hele rejsen og indtil Metroens område forlades. Billetter og kort skal fremvises til Metro Stewarden på forlangende. Billetkontrol kan ske både under rejsen, ved udstigning og på Metrostationen efter afsluttet rejse. Hvis man ikke kan fremvise gyldig billet eller kort under rejsen, i forbindelse med udstigning eller på Metrostationens område efter at have afsluttet rejsen, udstedes en kontrolafgift. Afgiften er et girokort, som kan betales via bank eller på posthus. Kontrolafgiften er samtidigt billet til vidererejse til den Metrostation, passageren oplyser som bestemmelsesstationen. Kontrolafgiften er 750 kr. for voksne.

Fra de fælles rejseregler:

Mobilperiodekort**Gyldighed**

Mobilperiodekortet er gyldigt til et ubegrænset antal rejser med bus, tog og metro indenfor gyldighedsperioden og gyldighedsområdet. Gyldighedsperioden starter kl. 00.00 på kortets første gyldighedsdag. Perioden slutter kl. 04.00 efter sidste gyldighedsdag.

Sidste påstigning skal ske inden mobilperiodekortet udløber. Herefter er mobilperiodekortet gyldig til at fortsætte rejsen indenfor gyldighedsområdet, men ikke til at skifte til anden bus, tog eller metro.

Mobilperiodekortet er først gyldigt, når det er modtaget på enheden, og kan fremvises på forlangende.

Levering

Mobilperiodekortet bliver leveret til, og gemt i den enhed, hvor den er købt.

Kopiering, ændring eller videresendelse af mobilperiodekort til anden person er ikke tilladt. Det er strafbart efter straffeloven at rejse på mobilperiodekort, der er kopieret eller forfalsket, ligesom det også er strafbart at forfalske og videresende mobilperiodekort. Misbrug anmeldes til politiet.

Hvis du sletter Mobilperiodekort applikationen bliver dit mobilperiodekort også slettet. Hvis du senere installerer applikationen igen på samme enhed, bliver gyldige mobilperiodekort overført til enheden igen.

Det er ikke muligt at udskrive mobilperiodekortet.

Kontrol

Mobilperiodekortet skal vises for buschauffører ved indstigning i bussen og for kontrolpersonale på forlangende. Mobilperiodekortet skal vises med det aktive mobilperiodekort, hvor zoner og dato fremstår, og på opfordring vises kontrolkode på bagsiden af periodekortet. På forlangende skal gyldig legitimation kunne fremvises sammen med periodekortet. Gyldig legitimation er eksempelvis sygesikringskort, studiekort, kørekort og pas

REJSEREGLER Billetter og Kort BUS/TOG/METRO 20.01.2013 14/27

Hvis du mister/glemmer din enhed, eller hvis den løber tør for strøm, eller du på anden måde ikke er i stand til at vise dit mobilperiodekort, skal du købe en anden billet inden du begynder din rejse. Gør du ikke det må du påregne at skulle betale en kontrolafgift.

Den konkrete sag:

Klageren kunne ved kontrol i zone 01 den 8. september 2013 ikke forevise gyldig billet, idet hans mobilperiodekort var udløbet den 6. september 2013, og klippekortet kun var gyldigt i zone 03 og 04. Kontrolafgiften i zone 01 blev dermed pålagt med rette.

Det følger af selvbetjeningsprincippet, at klageren selv er ansvarlig for at være i besiddelse af gyldig billet, og havde klageren inden påstigning af metroen åbnet applikationen med sit periodekort, ville det havde været åbenbart for ham, at periodekortet var udløbet, idet der hen over kortet var påført en stor rød tekst "UDLØBET".

Metro Service har under sagen oplyst, at applikationens påmindelse om kortets udløb virker således, at 3, 2 og 1 dag før kortet udløber, kommer der en besked på skærmen, når man åbner applikationen. Hvis man ikke åbner applikationen, kommer beskeden ikke frem. Beskeden vises kun en gang om dagen.

Ankenævnet lægger herefter til grund, at det ikke skyldtes en fejl ved applikationen, at klageren ikke så en påmindelse om, at periodekortet udløb den 6. september 2013, men at klageren ikke åbnede applikationen i dagene op til udløbsdatoen.

Ankenævnet lægger videre til grund, at klageren ikke inden rejsen den 8. september 2013 sikrede sig at være i besiddelse af gyldig rejsehjemmel, således som rejsereglerne foreskriver, idet han i givet fald ville have den tydelige røde tekst om at periodekortet var udløbet.

Ankenævnet finder på den baggrund, at der ikke har foreligget sådanne særlige omstændigheder, at klageren skal fritages for at betale den pålagte kontrolafgift ved rejse uden gyldig rejsehjemmel.

Ankenævnet træffer herefter følgende

AFGØRELSE:

Metroselskabet I/S v/Metro Service A/S er berettiget til at opretholde kravet om klagerens betaling af kontrolafgiften på 750 kr. Beløbet skal betales inden 30 dage jf. ankenævnets vedtægters § 15.

Da klageren ikke har fået medhold i klagen, tilbagebetales klagegebyret ikke, jf. § 26, stk. 4, modsætningsvist.

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.

På ankenævnets vegne, den 17. juni 2014



Tine Vuust
Nævningsformand

