

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer:	2016-0025
Klageren:	XX Tyskland
Indklagede:	Metroselskabet I/S v/Metro Service A/S
CVRnummer:	21 26 38 34
Klagen vedrører:	Kontrolafgift på 750 kr. grundet manglende forevisning af Citypass, som klageren ikke kunne finde i kontrolsituationen
Parternes krav:	Klageren ønsker kontrolafgiften annulleret Indklagede fastholder denne
Ankenævnets sammensætning:	Nævnshoved, landsdommer Tine Vuust Asta Ostrowski Torben Steenberg Bjarne Lindberg Bak Alice Stærdahl Andersen

Ankenævnet for Bus, Tog og Metro har på et møde den 19. september 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 vedtægter § 24, stk. 2, 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, som er engelsktalende og bosat i Tyskland, var den 2. januar 2016 i København og rejste med metroen til Lufthavnen st., da han skulle nå et fly. Efter metroen havde forladt Femøren st., var der kontrol af klagerens rejsehjemmel, hvor han klokken 17:00 blev pålagt en kontrolafgift på 750 kr., fordi han ikke kunne forevise en gyldig billet. Ifølge klageren havde han et gyldigt City-pass.

Stewarden har på den elektroniske kontrolafgift som årsag skrevet "udløbet rejsehjemmel", samt noteret følgende:

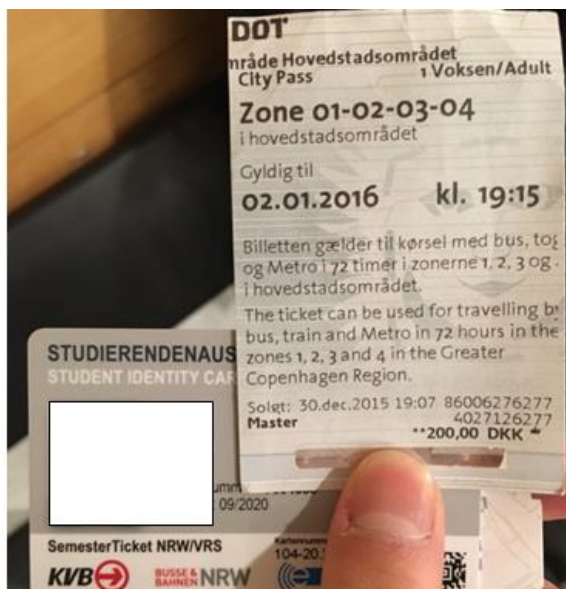
"-pax kunne ikke finde sin gyldig billet under kontrol. han oplyst at han havde købt en billet"

Klageren anmodede den 9. januar 2016 Metro Service om annullering af kontrolafgiften og anførte til støtte herfor, at han på den pågældende rejse var blevet kontrolleret 5 minutter tidligere og derefter havde lagt billetten i sin taske med brugte billetter. Hans flyafgang var nært forestående, og de havde ikke nok tid til at finde billetten. Han fandt den senere efter at have ledt blandt de hundredvis af billetter i tasken. :

"

I was checked twice in the single journey to the airport. For the first time I showed my valid ticket and thinking that I would be my last journey, I put the ticket to my used tickets bag(not my pocket). But unfortunately there was a second check only 5 min afterwards. The scheduled flight was close, we didn't having enough time to find out the ticket. But I found it later after searching the hundreds of tickets in the bag and attached it is.

"



Metro Service fastholdt den 12. januar 2016 kontrolafgiften med den begrundelse, at passagerer skal kunne forevise billetten ved kontrol og at kontrollørerne var instrueret i at give passagererne

en rimelig tid til at finde sin billet, og at de ikke accepterede efterfølgende indsendelse af upersonlige billetter:

“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 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. Our members of staff have been instructed to give the passenger a reasonable amount of time to find his or her ticket. If the passenger is unable to present a valid ticket, the passenger must accept the issue of a fine.

We do not accept subsequent presentation of tickets, as these are not personalized with a name or a photograph of the ticket holder.

Considering the above, you will be charged the full amount of the fine, which we request that you pay as soon as possible.”

Klageren indgav derpå klage til ankenævnet, hvori han gjorde gældende, at kontrolløren kunne se, at klageren skulle nå et fly og fortalte med det samme klageren, at han kunne sende en kopi af billetten senere. Kontrolløren var vidende om, at der var tale om et Citypass, som tilsyneladende er upersonligt, og kontrollørens ord udelukkede med det samme, at klageren skulle bruge mere tid på at lede efter billetten.

ANKENÆVNETS BEGRUNDELSE:

Klageren kunne ved kontrollen den 2. januar 2016 ikke forevise gyldig rejsehjemmel, da han ikke kunne finde sit Citypas. Kontrolafgiften blev dermed pålagt med rette.

Et Citypass er en upersonlig billet, som gælder i henholdsvis 24 eller 72 timer i zonerne 01-04 til et ubegrænset antal rejser.

Klagerens efterfølgende indsendelse af kopi af et Citypass kan efter ankenævnets faste praksis ikke medtages i bedømmelsen af, om han var i besiddelse af gyldig rejsehjemmel ved kontrollen og kan derfor ikke føre til et andet resultat.

Klageren har oplyst, at han skulle nå en flyafgang og havde lagt sit Citypass i en taske fyldt med brugte billetter, efter at han var blevet kontrolleret tidligere på rejsen, hvorfor han ikke så nemt kunne finde sit Citypass. Det beroede herefter på klagerens egne forhold, at han ikke i kontrolsituationen på forlangende kunne forevise gyldig billet.

Det bemærkes, at pligten til at betale kontrolafgiften ikke er betinget af, om passageren bevidst har forsøgt at unddrage sig betaling. Dette er et område med oplagt mulighed for omgåelse af reglerne om at kunne forevise gyldig billet ved kontrollen, hvis det accepteres, at en kontrolafgift skal frafalde ved efterfølgende indsendelse af en upersonlige billetter.

Som følge af det anførte, finder ankenævnet, at der ikke har foreligget sådanne omstændigheder, at klageren skal fritages for kontrolafgiften.

For så vidt angår anmodningen om, at Metro Service indsender overvågningsoptagelser, henhører denne under Datatilsynet.

RETSGRUNDLAG:

Ifølge § 2, stk. 1, jf. § 3 nr. 3 i lovbekendtgørelse 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.

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører følgende:

"I was checked twice in 10 minutes by two different controller on my last journey to the airport. Assuming I would not be checked again after the first check, I put the ticket in a bag full of used tickets, resulting that I could not easily find the ticket at the second check. Seeing I was to catch the flight, the second controller told me that I could send a photocopy of the ticket later. So as he told me, I wrote a complaint with the photocopy and my ID when I found the ticket after landing in Germany.

But surprisingly I was refuted for two reasons, 1. The ticket has no name on it so I couldn't prove it's mine; 2. I had enough time to find the ticket. Concerning the refutation, I would like to address two points proving that 1. I had indeed a valid ticket and 2. I bear no major responsibility of not showing the ticket.

1. Considering the fact that I was checked twice by two different controllers within 10 minutes (you can check the CCTV in the cabin), if I hadn't had a valid ticket I would have been caught twice but not the second time only. Since no record was left for the first ticket check, it proved that I definitely had a valid ticket. Also, I don't think it actually possible to get a 3-day pass dating back precisely 3 days before my departure in ANOTHER country.

2. Upon my arrival at the airport, I was told by the controller that I could send a photo of my ticket instead of showing the ticket right at the moment, with his awareness of my claimed possession of a 3-day-pass, on which, as written in the refutation of my first claim, had neither name nor photo. The controller's word directly ruled out the possibility of spending more time managing to find my ticket. Take both points into consideration, I would have been able to show my valid ticket (as attached) at that moment, if I hadn't been misled by the controller.

Thank again you for your time. Copenhagen is such a wonderful city to me but it makes me terribly sad and shocked, being accused of something I hadn't even done but badly derogates from my reputation. Hope justice will be done."

Indklagede anfører følgende:

"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 is met by a steward inspecting tickets on the 2nd of January 2016 at 17:00 between Femøren station and Lufthavnen station. The complainant showed a 24 hour ticket that was no longer valid. As the complainant was not able to present a valid ticket, a fare evasion ticket was issued, according to the travel regulations.

In his complaint to Metro the complainant has attached a copy of another City Pass ticket, explaining that he was late for his flight and did not have time to find it when inspected.

According to the Common Travel Rules a ticket is impersonal, and therefore a subsequent presentation is not accepted. Thus, it will not be possible to have a fine written off based on the output of bank statements. A ticket is valid only to the person that holds it when inspected.

In his letter to the Appeal Board the complainant asks us to look at video surveillance in train. It can however not be done for several reasons ... First, it would be necessary to know exactly in which train the complainant claims to have been checked in the first time. Secondly, only the Police, according to Danish law are allowed to browse video surveillance, and that only on condition that there has been an incident of police interest. Finally, the video surveillance is only kept for a month."

På ankenævnets vegne



Tine Vuust
Nævnetsformand