

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2016-0042
- Klageren:** XX
2300 Kbh. S
- Indklagede:** Metroselskabet I/S v/Metro Service A/S
CVRnummer: 21 26 38 34
- Klagen vedrører:** Kontrolafgift på 750 kr. grundet udløbet periodekort. Fornyet samme dag, men med gyldighed fra den efterfølgende dag.
- 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 13. 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, rejste den 15. februar 2016 med metroen til Vanløse st. Efter at metroen havde forladt Lindevang st., var der kontrol af hans rejsehjemmel, hvor han foreviste et periodekort, som var udløbet den 13. februar 2016. Han blev derfor klokken 20:57 pålagt en kontrolafgift på 750 kr. for udløbet rejsehjemmel.

Resten af aftenen anvendte klageren sit rejsekort, som kl. 21:47 blev checket ind på Vanløse st.

Samme aften kl. 22:59 købte klageren et nyt periodekort med gyldighed fra den følgende dag.

Klageren anmodede henholdsvis den 19. og 20. februar 2016 Metro Service om annullering af kontrolafgiften og anførte, at han var vant til at forny sit kort enten i slutningen af måneden eller i begyndelsen, men at han havde været rejst ud af Danmark den 3. december 2015 til den 14. januar 2016, hvorfor han havde fornyet kortet midt på måneden og derfor havde glemt at forny det igen. I dagene op til kontrolafgiften havde han ikke været ude i nogle dage. Han anførte videre, at han betalte for resten af rejsen og havde fornyet kortet samme dag, som kontrolafgiften var blevet udstedt. Endelig vedlagde han sine tidligere månedskort:



Metro Service fastholdt dem 19. februar 2016 kontrolafgiften og anførte følgende:

"From the copy of your travel card, we can see that you have not renewed your card continuously around the time the fine was issued, and therefore your travel card was not valid upon inspection.

Based on the above mentioned, the fine will be maintained and we have enclosed a new payment form for your convenience, which we urge you to pay as soon as possible."

ANKENÆVNETS BEGRUNDELSE:

Klageren kunne ved kontrollen den 15. februar 2016, efter at metroen havde forladt Lindevang st., ikke forevise gyldig rejsehjemmel, da hans periodekort kun var gyldigt til og med den 13. februar 2016.

Kontrolafgiften blev hermed pålagt med rette.

Hvis man klikker på linket "Kundeservice" på forsiden på Metro Services hjemmeside, får man følgende information ved at klikke på "*Indsigelse over kontrolafgift*":

"Vil du klage over en kontrolafgift, du har modtaget i Metroen? Hvis du har fået en kontrolafgift, fordi du havde glemt at medbringe eller forny dit periodekort, kan du sende os en kopi af det gyldige kort."

Til sammenligning er teksten på DSB's hjemmeside sålydende, hvis man klikker på "*Jeg havde glemt at forny mit periode- eller pendlerkort*":

"Har du glemt at forny dit periode- eller pendlerkort, har du mulighed for at få nedsat kontrolafgiften til 125 kr. Det kræver, at kontrolafgiften er udkrevet senest dagen efter kortets udløb, og at kortet er fornyet med start samme dag, som du fik kontrolafgiften."

Men allerede fordi periodekortet var udløbet 2 dage, inden kontrolafgiften blev udstedt, opfyldte klageren ikke den første betingelser for at få kontrolafgiften nedskrevet til et ekspeditionsgebyr på 125 kr.

Den omstændighed, at klageren plejede at forny sit periodekort sidst på måneden, men i januar havde fornyet det midt på måneden, fordi han havde holdt ferie, kan ikke føre til et andet resultat. Det kan heller ikke føre til et andet resultat, at klageren ca. 1 time efter kontrolafgiftens udstedelse anvendte sit rejsekort.

Ankenævnet finder derfor, at der ikke har foreligget sådanne særlige omstændigheder, som kan medføre til, at klageren skal fritages for kontrolafgiften, eller at denne skal annulleres mod et administrationsgebyr på 125 kr.

RETSGRUNDLAG:

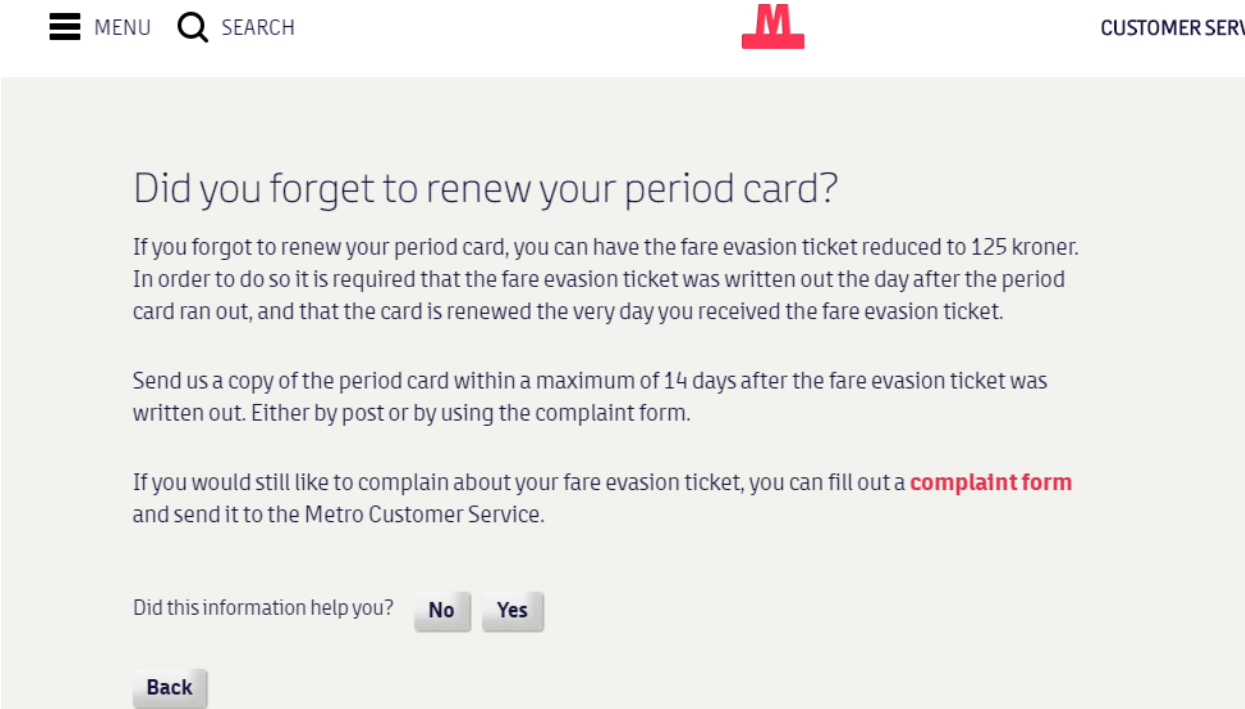
Ifølge § 2, stk. 1, jf. § 3 nr. 3 i lovbekendtgørelse nr. 686 af 27. maj 2015 om lov om jernbaner, gælder loven også for metroen. Af § 14 stk. 1, fremgår jernbanevirksomhedernes adgang til at opkræve kontrolafgift og ekspeditionsgebyr for passagerer, der ikke foreviser gyldig rejsehjemmel (billetter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

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

Engelsk information fra Metros hjemmeside vedrørende nedsættelse af kontrolafgift:



The screenshot shows the Metro Customer Service website interface. At the top, there is a navigation bar with a menu icon, the text 'MENU', a search icon, the text 'SEARCH', the Metro logo (a red 'M'), and the text 'CUSTOMER SERV'. The main content area has a light grey background and contains the following text:

Did you forget to renew your period card?

If you forgot to renew your period card, you can have the fare evasion ticket reduced to 125 kroner. In order to do so it is required that the fare evasion ticket was written out the day after the period card ran out, and that the card is renewed the very day you received the fare evasion ticket.

Send us a copy of the period card within a maximum of 14 days after the fare evasion ticket was written out. Either by post or by using the complaint form.

If you would still like to complain about your fare evasion ticket, you can fill out a **complaint form** and send it to the Metro Customer Service.

Did this information help you?

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører følgende:

"The Metro company has refused to accept my honest explanation of what happened. They say that I did not renew my card at the time the fine was given. As you can see, I renewed my card on the same date on 15-02-2016, when the fine was given out. At the time of renewal, I had an active running rejsekort. That was the main reason I set my travel card to be operational from 16-02-2016 and not the date of the fine i.e. 15-02-2016. You can check my journey on that date from Vanløse, Valby and then to Amagerbrogade on my electronic travel card no.xxx. Alternatively I can provide the details from my print out. I normally keep the electronic card for journeys outside my period card zones. I have been renewing my cards consistently at the end or the beginning of the month. You can access the information from my period card. It's only last January that my travel card was beginning and ending at the middle of the month. This is because I traveled on 3rd of December, 2015 and came back on 13 January, 2016. This is what confused me as I am used to end month renewal and monthly abonnement I used to before. It is unfair for the Metro company to uphold the fine even after they can see that I renewed my card the same day the fine was giv-

en out and after informing the company that I paid for the rest of my journey, which from the records, ended at 23:11 at Amagerbrogade on 15-05-2016. Hope the board will take into consideration the information I have given out and set a side the fine handed out to me. If there is any more information needed I am ready to give."

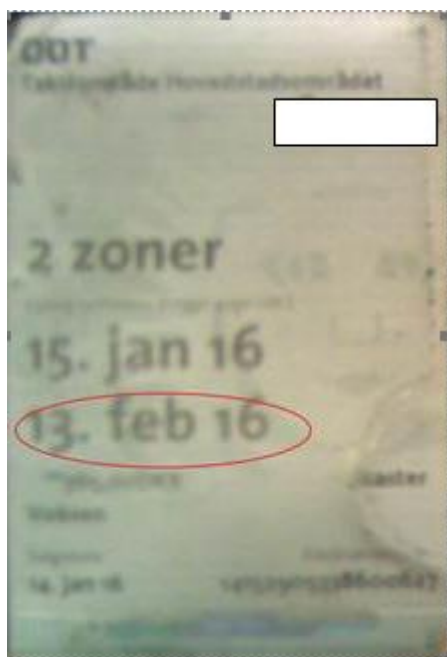
Indklagede anfører følgende:

"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 15th of February 2016 at 20:57 o'clock. The complainant presents an expired period card. As the complainant is not able to present a valid ticket, a fare evasion ticket is issued, according to the travel regulations.

From the photo taken with the PDA we can see that the complainants period card expired on the 13th of February, see inserted below:



The fine was issued on the 15th of February and the period card was renewed at 22:57 o'clock the same day. But instead of renewing the card retroactively from the date when the previous card expired, the complainant chose first to renew the card so that it was valid from the day after the fee was issued.

The complainant writes in his letter to the Appeal Board that the reason why he first renewed the period card to be valid from the 16th of February was that he also possess a rejsekort. We have contacted Rejsekort A/S who confirms that the complainant owns a rejsekort and has provided us

with card history for the relevant period. From the history we can see that the rejsekort was used later on the day of the fine, but it was not in use at the time when the fine was issued.

The complainant also states that he always renews his card at the beginning or the end of a month and that he find it unfair that the Metro upholds the fare evasion ticket . We are very sorry if the complainant find it unfair, but we relate exclusively to the facts. Fact in this case is that the complainant did not have a valid ticket/card when he was inspected and that his period card had expired 2 days prior to the fine and that he did not renew it to be valid until the day after the fare evasion ticket was issued.



At our homepage, at this link <http://m.dk/#!/kundeservice?79A2C60D> one can read that it is possible to have a fare evasion ticket written down to a fee of 125,- kroner on the condition that validity of the card must not be exceeded by more than a 24 hours and that and that the card is renewed retroactively.

Havde du glemt at forny dit periodekort/personlig billet?

Hvis du har glemt at forny dit periodekort eller pendlerkort, og gør opmærksom på det i forbindelse med billetkontrol, så modtager du i første omgang en kontrolafgift. Efterfølgende har du mulighed for at få kontrolafgiften annulleret mod et ekspeditionsgebyr på 125 kroner på følgende betingelser:

- gyldighedsperioden må ikke være overskredet med mere end maksimalt 1 døgn på kontroltidspunktet
- kortet skal fornyes med tilbagevirkende kraft på en station
- fornyelsen skal ske senest 14 dage efter gyldighedsperiodens udløb
- kopi af det fornyede kort skal sendes til Metroens Kundecenter inden 14 dage

Skriv til:

Metro Kundeservice
Metrovej 3
2300 København S

Udfyld formularen online

”

Hertil har klageren anført følgende:

“The fact that the responsibility to renew my travel card after expiry is purely mine is not in contention. What is in contention is how I have been treated after I had forgotten to renew my monthly card.

In this particular case, as earlier mentioned, I did forget to renew my period card. This is the basis for my appeal. In their letter dated 19 February, 2016 upholding the fine, the Metro team state that the main reason why they had to uphold the fine is because my card was not valid upon inspection after the fine was issued. In reply to this, I state that at the time of renewing my travel card at the Central Station at 22:57o'clock; I had my Rejsekort checked in and running. See the attached data from my Rejsekort between 22:45 o'clock and 23:11 o'clock.

Prior to the renewal as you can see I had used my Rejsekort from Vanløse at 21:47 o'clock, where my first journey ended, to Valby st.at 21:53 o'clock. This means that I had a valid travel ticket at the time the metro team alleges that I did not have a valid travel card upon inspection. Besides this, the Metro team states that my rejsekort was not in use at the time the fine was issued. Ones again, the basis for this appeal is that I forgot to renew my travel card. If I were to be aware that my card had expired, then I was to use my Rejsekort at the beginning of my journey or renew my travel card accordingly. That is the main reason why I used my Rejsekort after the fine was given up to the point where I renewed my period card at the central station.

As evidenced from my previous travel cards attached hereby, I have been renewing my travel cards regularly and promptly at the end or beginning of every month. There is no doubt about this. In this particular incident, my travel card was ending in the middle of the month unlike my previous norm. This made me to forget to renew my card and as earlier mentioned this is the basis for my appeal. It was not by any degree intentional.

I humbly urge the appeals board to consider my case and issue the ruling within the context of genuinely forgetting to renew my travel card.”

Hertil har indklagede anført følgende:

“The complainant states in his latest mail, that his Rejsekort was checked in when he got the fine. That is not correct.

The fine was issued 15th February at 20:57 between Lindevang station and Vanløse station. As you can read below the rejsekort was not checked in until 46 minutes later, at Vanløse station.

Reg. udstyr dato/tid	Reg. system dato/tid	Ragnskabsperiode	Handling	Transakt.type	Kortnr.	Kortokv.nr.	Rabseokv.nr.	Lokation	Udstyr / -nr.
15-02-2016 23:11:00	15-02-2016 03:51:10	01-02-2016	Check ud	Check ud		277	99	Tingvej/Åmagerbrogade	VAL_11200 - 1341E5
15-02-2016 23:02:18	15-02-2016 03:51:10	01-02-2016	Check ind	Check ind		270	99	København H	VAL_11198 - 13382A
15-02-2016 23:01:58	15-02-2016 03:51:10	01-02-2016	Check ud	Check ud		225	99	København H	VAL_11199 - 132422
15-02-2016 22:45:08	15-02-2016 03:40:29	01-02-2016	Check ind	Check ind		274	99	Gl. Jernbanevej	VAL_05810 - 1340C0
15-02-2016 21:53:12	15-02-2016 22:09:23	01-02-2016	Check ud	Check ud		273	98	Valby St.	VAL_25546 - 13C786
15-02-2016 21:47:04	15-02-2016 22:09:17	01-02-2016	Check ind	Check ind		272	98	Vanløse St.	VAL_22686 - 13C78D
15-02-2016 21:45:36	15-02-2016 22:00:06	01-02-2016	Tank-op	Tank-op		271		Vanløse St.	STO_Val_RVM_101 - 048103
15-02-2016 21:43:28	15-02-2016 21:53:58	01-02-2016	Check ud	Check ud		270	97	Vanløse St.	VAL_22876 - 13D1F1
15-02-2016 21:43:25	15-02-2016 21:53:58	01-02-2016	Check ind	Check ind		269	97	Vanløse St.	VAL_22875 - 13D17F
03-12-2015 16:16:56	03-12-2015 21:15:43	01-12-2015	Check ud	Check ud		268	95	Ellehammervej/Krystvej	VAL_11128 - 1335AB

The complainant also states that when he renewed his period card at 22:57 the same day as the fine was issued his rejsekort was checked in. That is correct, but it has no relevance to the case, nor does it affect the fare evasion ticket that the complainant has previously renewed his card on time.

In this case, the complainant did not possess a valid ticket when inspected. His period card had expired two days before the fine was issued and he did not renew the expired card retroactively, but only with effect from 16 February and thus first 3 days after the card's initial period."

Hertil har klageren anført følgende:

"Just to briefly reply to the metro team response, I will like to state that no where in my previous responses that I have stated that at the time of being issued with the fine, I had my rejsekort checked in. I have stated clearly that I used my rejsekort after being notified by the inspectors that my period card is expired. In their letter dated 19th February, 2016, the metro team states that the main reason why they uphold the fine is because I did not hold a valid ticket after the fine was issued as I renewed my card starting from the next day. This is where I stated at the time of renewing my period card my rejsekort was running.

I urge the appeal board to consider my case on the basis of forgetting to renew my period card and issue the verdict accordingly to that effect."

Hertil har indklagede anført følgende:

"We are sorry if we have misunderstood what the complainant has written in his earlier request regarding checking in his rejsekort.

However, it has no significance to the case in question. The fact is that the complainant received a monitoring charge Monday, February 15 as his monthly pass had expired Saturday, 13 February 2016. The complainant renewed the monthly card 2 hours after he had received the fee, but only to apply from Tuesday, February 16, and hence 3 days after the card had expired."

På ankenævnets vegne

Tine Vuust
Nævnensformand