

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer: 2017-0031

Klageren: XX
2670 Greve

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

Klagen vedrører: Kontrolafgift på 750 kr. grundet manglende billet.

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 2. maj 2017 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. samt 200 kr. i rykkergebyr, i alt 950 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 24 august 2016 med metroen. Forinden forsøgte hun efter egne oplysninger forgæves på Hundige st. at købe en billet, men hun havde kun MasterCard, som automaten ikke tog. Rejsekortautomaten var i stykker, hvorfor hun ikke kunne tanke sit rejsekort op. Derefter fik hun hjælp til at købe en SMS-billet af en fremmed.

Efter at metroen havde forladt Kastrup st., var der kontrol, og klageren fremviste en mobilbillet, som var udløbet. Klageren blev herefter klokken 16:14 pålagt en kontrolafgift på 750 kr. Klageren har gjort gældende, at hun ikke fik udleveret nogen kontrolafgift, men Metro Service har fremlagt en kvittering, hvor hun kvitterede for at have modtaget kontrolafgiften.

Det fremgår af logs fra Unwire, der leverer mobilbilletter, at der ikke er købt eller leveret nogen SMS-billet til klagerens telefon den 24. august 2016. Endvidere fremgår det, at klageren gentagne gange annullerer påbegyndte bestillinger af mobilbilletter.

| Købstidspunkt | Betalingskanal | Operatør | Applikation | Billet status |
|-----------------------------------|----------------|----------|-------------|---------------|
| Torsdag 15. december 2016, 19:32 | SMS | Telenor | | Fejl |
| Mandag 17. oktober 2016, 01:50 | SMS | 3 | | Afliveret |
| Mandag 17. oktober 2016, 01:48 | SMS | 3 | | Fejl |
| Onsdag 5. oktober 2016, 20:22 | SMS | 3 | | Annuleret |
| Onsdag 5. oktober 2016, 20:21 | SMS | 3 | | Annuleret |
| Tirsdag 4. oktober 2016, 20:22 | SMS | 3 | | Fejl |
| Torsdag 22. september 2016, 21:59 | SMS | 3 | | Afliveret |
| Torsdag 22. september 2016, 21:57 | SMS | 3 | | Fejl |
| Torsdag 22. september 2016, 21:44 | SMS | 3 | | Afliveret |
| Torsdag 22. september 2016, 21:44 | SMS | 3 | | Fejl |
| Lørdag 10. september 2016, 15:47 | SMS | 3 | | Afliveret |
| Lørdag 10. september 2016, 15:45 | SMS | 3 | | Annuleret |
| Lørdag 10. september 2016, 15:43 | SMS | 3 | | Fejl |
| Torsdag 16. juni 2016, 06:38 | SMS | TDC | | Afliveret |
| Torsdag 16. juni 2016, 06:38 | SMS | TDC | | Fejl |
| Lørdag 14. maj 2016, 08:05 | SMS | TDC | | Afliveret |
| Fredag 13. maj 2016, 17:47 | SMS | TDC | | Afliveret |
| Tirsdag 3. maj 2016, 10:46 | SMS | TDC | | Fejl |

Metro Service har derudover undersøgt logs fra rejsekortautomaten på Hundige st., og der har været flere andre, som har kunnet tanke deres rejsekort op den pågældende dag:

| | | | | |
|---------------------|------------------------|------------|---------|---------|
| 24-08-2016 15:58:15 | 24-08-2016 16:02:29 | 01-08-2016 | Tank-op | Tank-op |
| 24-08-2016 15:52:38 | 24-08-2016 16:00:06 | 01-08-2016 | Tank-op | Tank-op |
| 24-08-2016 15:51:21 | 24-08-2016 16:00:06 | 01-08-2016 | Tank-op | Tank-op |
| 24-08-2016 15:50:38 | 24-08-2016 16:00:06 | 01-08-2016 | Tank-op | Tank-op |
| 24-08-2016 15:49:27 | 24-08-2016 16:00:06 | 01-08-2016 | Tank-op | Tank-op |
| 24-08-2016 15:37:57 | 24-08-2016 15:42:59 | 01-08-2016 | Tank-op | Tank-op |
| 24-08-2016 15:33:28 | 24-08-2016 15:42:59 | 01-08-2016 | Tank-op | Tank-op |
| 24-08-2016 15:33:14 | 24-08-2016 15:37:29 | 01-08-2016 | Tank-op | Tank-op |
| 24-08-2016 15:32:05 | 24-08-2016 15:58:13 | 01-08-2016 | Tank-op | Tank-op |
| 24-08-2016 15:22:05 | 24-08-2016 15:39:09 | 01-08-2016 | Tank-op | Tank-op |
| 24-08-2016 15:20:40 | 24-08-2016 15:22:30 | 01-08-2016 | Tank-op | Tank-op |
| 24-08-2016 15:18:21 | 24-08-2016 15:30:37 | 01-08-2016 | Tank-op | Tank-op |
| 24-08-2016 15:11:30 | 24-08-2016 15:15:06 | 01-08-2016 | Tank-op | Tank-op |
| 24-08-2016 15:06:11 | 24-08-2016 15:09:03 | 01-08-2016 | Tank-op | Tank-op |
| 24-08-2016 15:00:46 | 24-08-2016 15:09:03 | 01-08-2016 | Tank-op | Tank-op |
| 24-08-2016 14:55:29 | 24-08-2016 15:00:15 | 01-08-2016 | Tank-op | Tank-op |
| 24-08-2016 14:43:51 | 24-08-2016 14:45:16 | 01-08-2016 | Tank-op | Tank-op |
| 24-08-2016 14:40:03 | 24-08-2016 14:45:16 | 01-08-2016 | Tank-op | Tank-op |
| 24-08-2016 14:36:11 | 24-08-2016 14:45:16 | 01-08-2016 | Tank-op | Tank-op |

Da klageren ikke betalte kontrolafgiften, sendte Metro Service hende en betalingspåmindelse med et rykkergebyr på 100 kr. den 30. september 2016.

Klageren anmodede den 14. oktober 2016 Metro Service om annullering af kontrolafgiften og anførte til støtte herfor følgende:

"I live at hundige station and the payment machines were broke as well the rejsekort machine, so I asked a lady how to buy the mobile ticket, she did for me, took a train then a metro, and the control came he told me this ticket is expired. I told him it's not right, he said I will call the police if you didn't cooperate, It was at lufthavn station and i was already late, so I told him the story in brief and he said we'll I will write you a fine. Didn't have time to ask him how come it's wrong and all that, he didn't give me a ticket but later on I received a mail says I have 100 Dkk extra because I was late to pay !!!.. I didn't even get a previous letter. Please accept my apology for a lake of informations about mobile paying, but please concider the surrounding circumstances , that I had no other choice and it is my first time to get a ticket."

Metro Service fastholdt den 17. oktober 2016 kontrolafgiften med henvisning til selvbetjeningsprincippet, samt at klageren kunne have benyttet et af de gule opkaldspunkter, hvis hun havde brug for vejledning til køb af billetter.

Da klageren ikke indgav klage til ankenævnet eller betalte sit udestående, sendte Metro Service hende endnu en rykkerskrivelse med et rykkergebyr på 100 kr. den 21. november 2016.

ANKENÆVNETS BEGRUNDELSE:

Klageren kunne i kontrolsituationen ikke forevise en gyldig billet, og kontrolafgiften blev derfor pålagt med rette.

Således som sagen foreligger oplyst, hvorefter Metro Service har dokumenteret, at rejsekortautomaten på Hundige st. var funktionsdygtig, samt at der ikke er registreret køb af nogen sms-billet den 24. august 2016 på klagerens telefon, sammenholdt med Metro Services oplysning om, at der er en 7/Eleven på stationen, hvor klageren med betalingskort havde kunnet købe billet eller optanke sit rejsekort, finder ankenævnet, at der ikke har foreligget sådanne særlig omstændigheder, at klageren skal fritages for kontrolafgiften.

Vedrørende rykkergebyret kan ankenævnet ikke lægge klagerens oplysning til grund om, at hun ikke fik udleveret nogen kontrolafgift, idet der er fremlagt dokumentation for, at klageren kvitterede for modtagelse af kontrolafgiften.

Da hun ikke betalte kontrolafgiften eller fremkom med indsigelser, inden for 14-dages fristen efter kontrolafgiften blev pålagt, var Metro Service den 30. september 2016 berettiget til at sende hende en betalingspåmindelse med et rykkergebyr på 100 kr. jf. lov om renter ved forsinket betaling § 9, b, stk. 2. Da klageren først betalte klagegebyret til Ankenævnet den 24. januar 2017, var Metro Service berettiget til at sende hende endnu en rykkerskrivelse med et rykkergebyr på 100 kr. den 21. november 2016.

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:

“The ticket that I had on me on the 30th of September was mobile ticket, and the control didn't explain what's wrong with it but he said it's wrong.

Briefly, I am new in Denmark, and I've always had my rejskort and travelling with it all the time. I was heading to the airport and I didn't find any place to charge it because the machines were broken, and couldn't buy a ticket with coins because I only had money on my Mastercard, so I asked a woman at the station what to do and she told me about the mobile ticket and helped me getting it, then that problem happened when I arrived the airport station, and he just said it's wrong and he didn't give me a print out ticket, later on I received an email with an extra fee for payment delay while I never had a ticket in the first place.

So I'm asking the appeal board please to consider all the circumstances above and that I wasn't aware of whether the ticket is wrong or not as I never used it before.

And this was my first and will be the last time. ”

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.

In cases where passengers are not able to present a valid ticket, 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 boards contain travel information in both English and Danish.

Our Metro staff is trained to issue fare evasion tickets 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. It is unfortunately not sufficient to enquire with a member of the public, regarding ticket information, as they may not be adequately informed concerning the journey the passenger wishes to undertake. In order to ensure correct travel information passengers should contact our Metro staff either in person or via call points on the station or in the Metro trains.

Call points can be found on all of our ticket vending machines, as well as yellow call points 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.

In the case in question, the complainant was met by a steward inspecting tickets on the 23th of August 2016 at 16:14 between Kastrup station and Lufthavnen station. The complainant presented an expired ticket on her phone. As the complainant was not able to present a valid ticket, a fare evasion ticket was issued, according to the travel regulations.

There are many points in this case, that wonders us ...

The complainant writes in her letter to the appeals board that she got her fare evasion ticket on the 30th of September 2016. It is not correct. The fine the complainant got in the Metro was issued on August 24.

The complainant owns 2 personal rejsekort.

The complainant writes that she could not charge money onto her rejsekort because the rejsekort machines at Hundige station was broken. That is not correct. We have attached an pdf-file from Rejsekort, which shows that several other rejsekort customers charged their cards during the relevant period.

The complainant also writes that she could not buy a regular ticket in the ticket machine because she had no coins but just a Mastercard. Besides coins, the ticket vending machines take also accept payment cards though and in addition, there is a 7/Eleven shop on Hundige station where it is both possible to charge money to a rejsekort and buy a ticket at the checkout.

The complainant explains that she would instead buy a mobile ticket and was helped by a lady at the station. The complainant also states that when she was checked into the Metro, the steward said that the presented mobile ticket had expired.

According to the Stewards information on the fee, no ticket of any kind was presented in the control situation.

We have checked who the mobile number belongs to, and it belongs to the complainant. Next, we examined the purchase history for that number with Unwire, which is the provider of mobile tickets in the metropolitan area. Of the attached transcript, it appears that the complainant is a frequent user of mobile tickets, but on August 24, 2016 the complainant have not purchased or attempted to purchase a mobile ticket. There has been no communication between the complainant's mobile number and Unwire in the period between 16th June and 10th September 2016.

Finally the complainant explains that she did not receive the fare evasion ticket itself from the steward.

If a steward, for one reason or another, cannot come to give the fare evasion ticket itself to the passenger, the makes steward a note on the electronic control fee so that the Customer Service Department may send the fee/payment card. That has not happened in this case and we have no reason to believe that the steward should not have handed over the fee/ payment card in control the situation, which is the common procedure.

As described above, the equipment on Hundige station was fully operational, and the complainant has not bought/tried to buy a mobile ticket on her mobile number, so it is our contention that, no ticket of any kind was presented during the control situation, why we consider the fare evasion ticket issued on the correct basis.

The penalty was issued on August 24. The deadline for making objections to a fare evasion ticket is 14 days. The first time we hear from the complainant is October 14 after transmission of the first payment reminder. Not until January 24, 2017 the complainant pays the fee to the Appeals Board, which is why we first get this case for on January 25. Meanwhile, there has been added an additional payment reminder and the case is sent to collection. "

Hertil har klageren svaret:

"Regarding the print outs that you have sent and that I requested to be checked out, it's true that I mixed up dates, but I also asked you to check if the control gave me the ticket or not. and if you checked the cameras on that time, as I see you have access to everything or even the device that he carried on with him, you will 100% find out that he didn't even print out anything and Also there was no first warning for paying they claim, so I didn't get the ticket and later on I received a letter says that I have to pay extra fees on a fine, while I was waiting to receive a 750 ticket, I received 850 one.

On top of that, I doubt that I use the mobile phone paying service frequently, as I rarely use it when the machines are broken, and I always ask the control or passengers help to do it, because of the Danish language and that I am new to the country. And even the mobile paying service can confirm that I've tried to do it on my own many times and I failed, so instead of being on a transport without a ticket, I ask someone's help.

I can't prove that the machines were broken on that day, but as I gave you a permission to check on my phone history, please check the camera on the train or the control device, because I am not gonna pay for something that is not my mistake, if you are demanding that I pay the fine 750 DKK, I am totally obligated to pay it anyway as I didn't have the right ticket, I only applied for an appeal when I received a doubled up fine ticket and because I thought that the circumstances of that day would matter to the board and they will see that it was not on purpose. "

Indklagede har afslutningsvist svaret:

"It is true that Metro areas are under video surveillance. But Metro cannot simply browse through the recorded material. It is only the police who are allowed to review the material and then only if there have been incidents of police interest. So the complainant's request to review video material cannot be accommodated.

As explained in our previous answer, it is a fundamental part of the stewards work to give the payment card which represents the control fee, to the passenger. As the steward has made no note on the electronic control fee that the complainant did not get her payment card/control fee in the hand, we have no reason to believe that it was not handed over. On the contrary, the complainant has completed and signed a receipt slip in control situation acknowledging that she received a fee. We have attached the receipt as a pdf file.

Considering the above and on the basis of our response of 6 February 2017, we maintain our claim for payment of the fee of 750,- DKK, in addition to 2 payment reminders á 100,- DKK, a total of 950, - DKK."

På ankenævnets vegne



Tine Vuust
Nævnetsformand