

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer: 2017-0173

Klageren: XX
England

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

Klagen vedrører: Kontrolafgift på 750 kr. grundet manglende zone på periodekort.

Parternes krav: Klageren ønsker kontrolafgiften halveret.
Indklagede fastholder det fulde beløb

Ankenævnets sammensætning: Nævnensformand, landsdommer Tine Vuust
Niels Martin Madsen
Torben Steenberg
Rikke Frøkjær (2 stemmer)

Ankenævnet for Bus, Tog og Metro har på sit møde den 9. november 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.

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.

- oOo -

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 englænder, boede en måned i Danmark for at arbejde i Roskilde, hvortil hun rejste fra København dagligt. Hun havde derfor købt et periodekort til denne rejse, som var gyldigt i zonerne 01, 02, 08, 32, 43, 54, 66 og 76.

Den 1. juni 2017 rejste hun imidlertid med metroen fra Lufthavnen st. i zone 04 mod Nørreport st. i zone 01. Rejsen går tillige igennem zone 03. Som rejsehjemmel medbragte hun sit periodekort, som hun foreviste, efter at metroen havde forladt Lufthavnen st., hvor der var der kontrol af hendes rejsehjemmel. Hun blev herefter klokken 17:48 pålagt en kontrolafgift på 750 kr. for at mangle zoner på sit periodekort.

Klageren anmodede den 2. juni 2017 Metro Service om at annullere kontrolafgiften og anførte til støtte herfor følgende:

" hi I'm writing to complain about a fine I received. I am currently in Copenhagen for a month from London, carrying out an internship in Roskilde. I bought a rail pass on the 1st May to what I thought included all zones up to zone 8. I asked the woman who I bought the ticket from if this definitely meant I could use all transport and she showed me on the map that yes I could use it everywhere including zones 1-8. The person issuing the fine informed me that I could only use my pass in zones 1,2 and 8 and not the zones in between. Unfortunately the person I made the purchase from did not inform me of this. As I have been traveling through these zones to reach zone 8 I never thought this would be an issue. I clearly have just been misinformed and it is an honest mistake. I do not feel the 750dk fine is fair as I clearly was not trying to evade the fine as I had purchased the rail pass (at a great expense!) and I am new to Denmark so would not know otherwise. Please reconsider the issuing of the fine as now I am aware I will purchase a separate ticket if I ever need to travel to zones 3 or 4 in the future."

Metro Service fastholdt den 6. juni 2017 kontrolafgiften med henvisning til selvbetjeningsprincippet, samt at periodekortet kun kan anvendes i de zoner, som er anført på kortet. Hvis man rejser udover de angivne zoner, skal der tilkøbes billet, i dette tilfælde en billet på 2 zoner.

ANKENÆVNETS BEGRUNDELSE:

Klageren kunne ved kontrollen i metroen den 1. juni 2017 i zone 04 ikke forevise gyldig rejsehjemmel, da hendes periodekort var gyldigt i zone 01, 02, 08, 32, 43, 54, 66 og 76, og da hun ikke havde anden gyldig rejsehjemmel. Kontrolafgiften blev hermed pålagt med rette.

Ved køb af periodekort opnås en rabat, som er betinget af, at kortet har begrænset gyldighed til de specifikke zoner, der er påført på selve kortet, og som passageren har oplyst ved køb af kortet. Det er derfor ikke antallet af zoner på periodekortet, der er afgørende for, hvor mange zoner man skal tilkøbe, hvis kortets zoner ikke dækker rejseruten, men derimod de specifikke zoner.

Det af klageren anførte om, at den medarbejder som solgte hende periodekortet, gav hende fejlinformation, er udokumenteret, og kan ikke føre til et andet resultat.

Det bemærkes, at pligten til at betale kontrolafgift ikke er betinget af, om passageren har forsøgt at unddrage sig betaling. Dette er et område med oplagt mulighed for omgåelse af reglerne, om at betale for sin rejse, hvorfor ankenævnet finder, at der ikke har foreligget sådanne særlige omstændigheder, at klageren skal fritages for kontrolafgiften.

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.

Ifølge de dagældende fælles rejseregler for trafikvirksomhederne i Hovedstadsområdet, hvori hjemmelen til udstedelse af kontrolafgift fremgår, anføres det 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 perronen 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 have received a fine after the train left Copenhagen Airport station in zone 04. My periodic travel card, I presented, covers zones 01, 02, 08, 32, 43, 54, 66 and 76, which I now understand to be the reason I have been given the fine.

However, there are multiple reasons why I feel as though this is an unfair decision and amount to be fined which I will now explain below.

I am currently a student visiting the country from abroad. I am completing an internship in Roskilde and have been travelling daily to and from Copenhagen.

When I purchased my travelcard I asked the woman who issued it to me clearly where I was allowed to go and she said "everywhere" in these "8 zones" (showing me the map). I asked her if there was anywhere I can't use the pass and she clearly said no. As the card states 8 zoner on the left hand side I believed that mean zones 1-8. The woman never explained what the numbers on the right hand side of the pass meant. Being from England I did not understand what the pass illustrated and as the zone system in London is different I thought 8 zoner meant 1 through 8, not the random numbers 1,2,8,32,etc. She did not explain this to me clearly enough.

I was travelling with my partner who was carrying a valid ticket, that we had purchased at the airport prior to travelling, if I'd have known mine was not valid I would have clearly purchased an additional ticket myself as I was queuing anyway.

My pass gets checked daily and I had never had a problem with it before. I was not trying to cheat the system. I just had been misinformed when I purchased my pass. Not being native to Denmark or speaking Danish, I am not used to the zoning or pass system despite the coloured maps. As the pass is written in Danish I relied upon the information of the woman who sold me the ticket and I

feel for this reason I should not have to pay such a fine. I am also a student and do not have this money to spend, hence I would never do anything knowingly that would risk me getting fined."

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.

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.

In the case in question, the complainant was met by a steward inspecting tickets on the 1st of June 2017 at 17:48 between Lufthavnen (Airport) station (zone 04) and Nørreport station (zone 01). The complainant presented a periodic card valid for 8 specific zones, namely the zones 01, 02, 08, 32, 43, 54, 66 and 76. As the complainant was not able to present a valid ticket for zone 04, a fare evasion ticket was issued, according to the travel regulations.

A season card can be used unlimited and is therefore cheaper than ordinary tickets when travelling many times. If a passenger need to travel in other zones than the once ordered and written on the Stamkort, the passenger needs to buy additional ticket for each of the zones not included in the season card. For this specific journey the passenger should have bought a 2 zone ticket as supplement to the season card.

The complainant was meet by our steward after the train has left Lufthavnen (Airport) station and told that she was going to Nørreport station. When traveling by Metro from Lufthavnen (Airport) station to Nørreport station, you pass through zone 04 and 03 respectively. The complainant did not have any of these zones in her periodic card (see below).



In her inquiry, the complainant writes, inter alia, the following: *'When I purchased my travelcard I asked the woman who issued it to me clearly where I was allowed to go and she said "everywhere" in these "8 zones" (showing me the map.'*

The complainant also states that she travels every day between Copenhagen and Roskilde. If you enter the address listed in the complainant's periodic card as the starting point and makes a trip up on www.reiseplanen.dk , you will get the 8 specific zones that the complainant has in her periodic card, see below:

Prices for:

Østergade 1, 1429 København K, Københavns Kommu - Roskilde St. 06/30/2017 11:07

	Standard ticket			① First class
	Rejsekort	Single ticket	Multi ticket	Commuter Card
Adult	<input type="radio"/> 38,40 kr.	<input type="radio"/> 84,00 kr.	<input type="radio"/> 60,00 kr.	<input checked="" type="radio"/> 1260,00 kr.
Child	<input type="radio"/> 19,20 kr.	<input type="radio"/> 42,00 kr.	<input type="radio"/> 30,00 kr.	<input type="radio"/> 630,00 kr.
Pensionist	<input type="radio"/> 38,40 kr.	<input type="radio"/> 63,00 kr.	-	-
Youth	<input type="radio"/> 38,40 kr.	<input type="radio"/> 42,00 kr.	<input type="radio"/> 30,00 kr.	-
Disabled	<input type="radio"/> 19,20 kr.	-	-	-
Bicycle	<input type="radio"/> 10,40 kr.	-	-	-

Commuter Card, Adult	
Price:	1260,00 kr.
Period:	30 days
Price is calculated for:	8 zones
You travel through the zones:	DOT 001, 002, 032, 043, 054, 066, 076, 008

Of course, we were not present when the complainant bought her periodic card, but suppose that the complainant explained that she wanted to travel from the address in the periodic card to Roskilde. Thus, the complainant has obtained the correct zones for that particular journey, and it is also correct that the periodic card entitles the holder to an unlimited number of journeys in the specific zones during the validity period.

However, if you look at the zone map on, for example, reiseplanen.dk or the zone cards that are set up at all our stations, you will see that the tariff area applicable to the capital is divided into 99 zones, marked with numbers and colors. And if you look specifically at the information board from Lufthavnen (Airport) station, you can see that the airport is located in the red zone 04 and that you travel through Zone 03 to get to Nørreport station. See attached file for the entire information board.



Although we have sympathy for the complainant being a student from abroad, we see ourselves unable to offer preferential treatment. At Metro, we treat everyone equally, the requirement for valid ticket goes for all. No distinction is made, all travels on the same terms. There is thus no special rules for pensioners, children, tourists, students, disabled or any other interest groups - apart from some disability organizations that previously has entered into special agreements for each of their members.

Passengers must do an effort in familiarizing themselves with a transport system, when coming to a foreign country. Assuming that rules from their home country also applies in Denmark, is in our opinion not sufficient.

We must emphasize that we never relate to our customers' intentions regarding the purchase of tickets, but exclusively to the facts. The facts in this case are that the complainant did not have a valid ticket/card when inspected why we maintain our claim for payment of the fare invasion ticket xxx of 750 DKK. "

På ankenævnets vegne

Tine Vuust
Nævnetsformand