

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2017-0177
- Klageren:** XX
2400 København NV
- Indklagede:** Metroselskabet I/S v/Metro Service A/S
CVRnummer: 21 26 38 34
- Klagen vedrører:** Kontrolafgift på 750 kr. grundet manglende check ind, da klageren troede, der automatisk skete check ind, når hun tankede sit rejsekort op, samt et rykkergebyr på 100 kr.
- Parternes krav:** Klageren ønsker kontrolafgiften og rykkergebyret annulleret
Indklagede fastholder disse
- Ankenævnets sammensætning:** Nævnensformand, landsdommer Tine Vuust
Niels Martin Andersen
Torben Steenberg
Bjarne Lindberg Bak
Rikke Frøkjær

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. samt et rykkergebyr på 100 kr., i alt 850 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.

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SAGENS OMSTÆNDIGHEDER:

Klageren, som er engelsktalende, rejste den 1. april 2017 med metroen fra Lufthavnen st., hvor hun inden afrejse indsatte 200 kr. på sit rejsekort via en rejsekortautomat. Hun steg om bord uden at checke ind, idet hun troede, at der blev foretaget et check ind, når der indsættes penge på kortet. Efter metroen havde forladt Kastrup st., var der kontrol af klagerens rejsehjemmel, da der ikke var foretaget et check ind på rejsekortet, blev hun klokken 09:35 pålagt en kontrolafgift på 750 kr. for manglende check ind.

Klageren anmodede den 12. april 2017 Metro Service om annullering af kontrolafgiften og anførte til støtte herfor følgende:

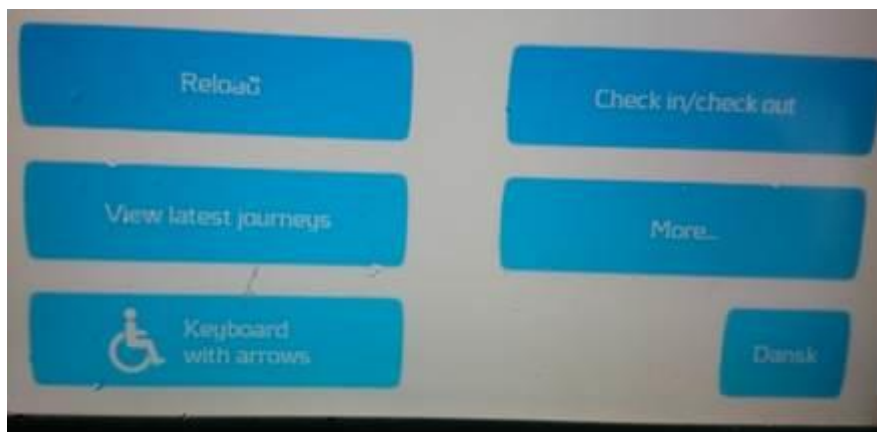
" I when I went from the airport to norreport. I refilled the rejsekort with 200 dkr right before I went on the train. I even got help on the platform to make sure I did everything right. On the train I got a fee since I did not check in. The steward and other people in the train told me to write you to get the money back since you can see that I refilled the rejsekort with 200dkr only a few minutes before I went on the train and therefore did not have any intention on not paying. "

Metro Service fastholdt den 18. april 2017 kontrolafgiften med henvisning til selvbetjeningsprincippet, samt at det fremgår af rejsekort rejsedata, at der ikke var foretaget check ind på klagerens rejsekort.

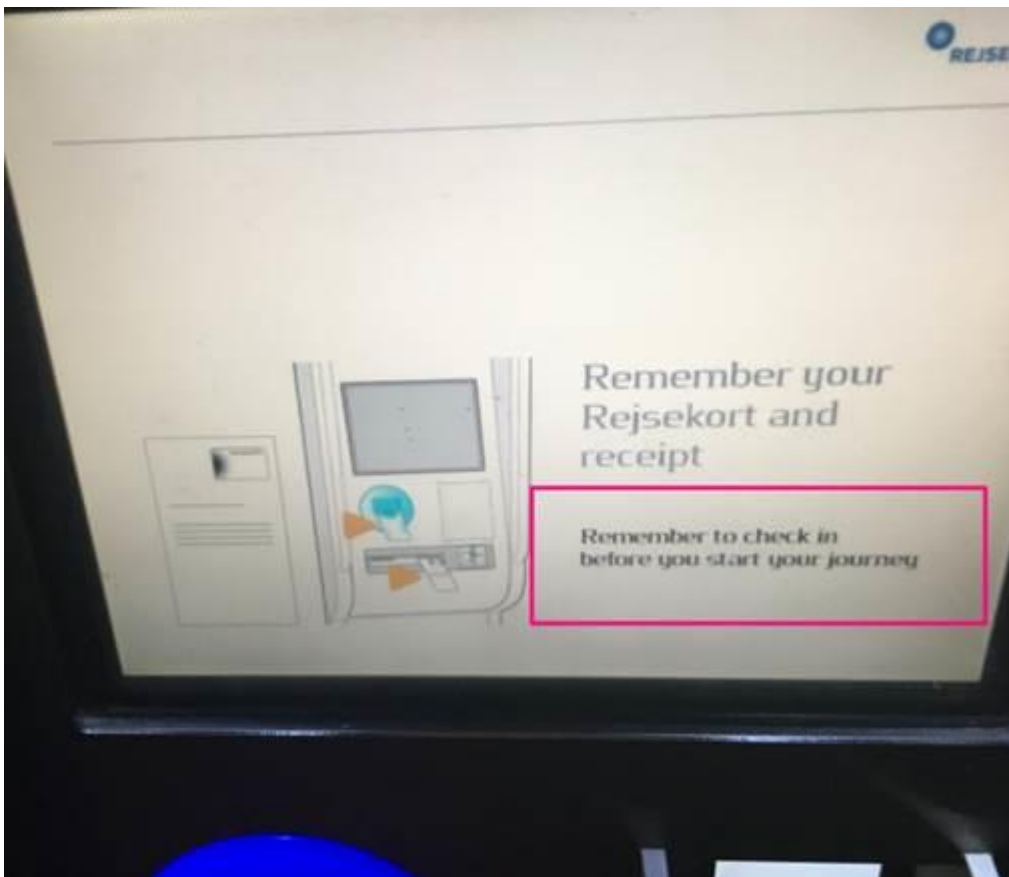
Den 23. maj 2017 blev der afsendt en betalingspåmindelse med et rykkergebyr på 100 kr. til klageren, idet hun ikke havde overholdt betalingsfristen.

Billeder fra en rejsekortautomat:

Når man på rejsekortautomaten har valgt "English", vil følgende skærbillede blive vist:



Det sidste billede der vises. Hvis der vælges engelsk som sprog:



Log fra klagerens rejsehistorik:

Date/Time	Reception date	Accounting period	Operation type	Transaction type	Card engraved ID	Card sequence number
01/04/2017 10:10:07	02/04/2017 17:34:09	01/04/2017	Check out	Check out		
01/04/2017 09:54:27	01/04/2017 20:08:23	01/04/2017	Check in	Check in		
01/04/2017 09:34:05	04/04/2017 14:24:44	01/04/2017	Inspection mark	Inspection		
01/04/2017 09:27:45	01/04/2017 09:40:11	01/04/2017	Reload	Reload		
31/03/2017 17:11:48	31/03/2017 17:16:11	01/03/2017	Check out	Check out		

ANKENÆVNETS BEGRUNDELSE:

Klageren kunne ved kontrollen i metroen den 1. april 2017 ikke forevise gyldig rejsehjemmel, da hun ikke havde foretaget et check ind på sit rejsekort og ikke havde anden gyldig rejsehjemmel. Kontrolafgiften for manglende check-ind blev derfor pålagt med rette.

Det af klageren anførte om, at hun troede at der blev foretaget et check ind, når der indsættes penge på kortet, kan ikke føre til et andet resultat. Ankenævnet har ved afgørelsen lagt vægt på, at der på rejsekortautomaten blandet andet kan vælges mellem "reload" eller "check-in/check out", samt at der på skærmen bliver gjort opmærksom på, at man skal huske at foretage check-ind.

Dette er et område med stor mulighed for omgåelse af passagerens pligt til at sørge for betaling af sin rejse, hvis det accepteres, at der er checket ind på rejsekortet, uanset at dette ikke er registreret på kortet eller i Back Office.

Da klageren ikke overholdt betalingsfristen og først rettede henvendelse til Metro Service den 7. juni 2017, var de berettiget til den 23. maj 2017 at have sendt hende en betalingspåmindelse med et rykkergebyr på 100 kr., jf. lov om renter ved forsinket betaling § 9b.

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.

Trafikvirksomhederne i Danmark har vedtaget fælles landsdækkende 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 perronen forlades.

Kunder, der ikke på forlangende viser gyldig rejsehjemmel, herunder er korrekt checket ind på rejsekort til deres rejse, skal betale en kontrolafgift på 750 kr. for voksne.

Det følger af bekendtgørelse om lov om renter ved forsinket betaling § 9 b, at for rykkerskrivelser vedrørende fordringer kan fordringshaveren kræve et gebyr, jf. stk. 2, såfremt skrivelsen er fremsendt med rimelig grund (rykkergebyr). Fordringshaveren kan endvidere kræve et gebyr, jf. stk. 3, for at anmode en anden om at inddrive fordringen på fordringshaverens vegne, såfremt dette er sket med rimelig grund (inkassogebyr). Stk. 2. Der kan kræves et rykkergebyr på højst 100 kr. inkl. moms for hver rykkerskrivelse, dog højst for 3 skrivelser vedrørende samme ydelse.

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører følgende:

"I was traveling with a friend on the train from Copenhagen Airport to Norreport and was given a fine since we did not check in, although we refilled the card only five minutes earlier with 200 dkr. When reloading the card there was nothing written on the screen of the reload-machine. I explained the situation to the man issuing the fine that replied he had to issue the fine for now.

However, he made clear that if I was telling the through about my 200dkr payment, I would not have to pay it. He said I should check in as soon as I get of the train (which I did) and then contact "Metro Kundservice" that would cancel my fine, since they could see that I made the payment and since there was no information about it on the screen on the airport. I have also called metro kundservice afterwards to double check if I was provided with the information regarding the check in on the airport, but I just got told that I am responsible to find the information myself prior to traveling. None of us had any phone or computer to get the "check in"-information since we were in a new country. I am chocked that I still have to pay the fee since I really tried my best to pay and make sure to travel in the right way although I did not have any chance to get the information through the internet. I really hope you can help me regarding this case."

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 1st of April 2017 at 09:35 between Kastrup station and Nørreport station. The complainant presented a rejsekort of the type anonymous that was not checked in. As the complainant was not able to present a valid ticket, a fare evasion ticket was issued, according to the travel regulations.

The complainant explained that she reloaded money on the rejsekort, shortly before she boarded the train. The complainant also writes *'when reloading the card there was nothing written on the screen of the reload machine'*.

From the card history (korthistorik) we received from Rejsekort A/S we can see that the complainant deposited 200 DKK on the card on the rejsekort-machine in the airport.

But putting money on the rejsekort and checking-in are two separate actions. Many passengers deposit money on their rejsekort when they have completed a trip and on the card reader display

has received a low balance message. If there was an automatic check-in of a rejsekort when uploading money, it would be necessary to remember to check-out the card after uploading.

It is not correct that you do not receive a message on the screen when you upload your rejsekort. If you select 'English' on the machine, you will be greeted by this screen asking what action you want to take:



Once you have completed your refill, you will receive a message on the screen that you must remember to check-in before traveling. We have attached the instructional video from Rejsekorts website. The video is in Danish, but if you have chosen 'English' on the machine, the whole course is in English. Note that last message on screen is a check-in reminder
https://www.youtube.com/watch?v=c_h5yiUv3pQ

The complainant also mentions in her letter to the Board of Appeal that she *'were in a new country'*.

We are a little surprised at this information as the complainant, according to the cpr-registry, has lived in Denmark since February 2017, where she entered from Sweden.

As mentioned earlier, it is correct that DKK 200 was added on the rejsekort in the machine at the airport. However, as confirmed by the card history, the card was not checked in before boarding the train.

For good measure, we have asked Rejsekort A/S to control if the check-in card readers in the airport were in operation. As shown in the attached 'udstyrshistorik', all 5 check-in readers were fully functional.

Rejsekort A/S has previously conducted a comprehensive analysis of logging of more than 30 million transactions. The analysis has shown that all transactions carried out with the travel card always are registered in the underlying rejsekort-system BackOffice. Since this is not the case, no correct check-in has been made.

This is an area with a high possibility of bypassing the passenger's duty to arrange for payment of his or her travel if it is accepted that the travel card has been checked-in, whether it is not registered on the card or in the Back Office.

Since it has been established that there has been no malfunction of the equipment, we assume that the missing check-in must be submitted to the complainant, why we maintain that the fare evasion ticket is imposed correctly.

Fare evasion ticket number 00xxxxx was issued on April 1, 2017 and the complainant wrote to us on the 12th of April. After processing the complainant's inquiry, we maintained the claim and moved the payment date to May 15th. Since we did not receive timely payment or heard from the complainant before 7th June, a payment reminder was sent on 23 May (see attached pdf file).

In light of the above, we maintain our claim for payment of the fare evasion ticket of 750 DKK in addition to the payment reminder of DKK 100, totaling DKK 850."

På ankenævnets vegne



Tine Vuust
Nævnshoved