

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2017-0181
- Klageren:** XX
21111 Malmø, Sverige
- Indklagede:** Metroselskabet I/S v/Metro Service A/S
CVRnummer: 21263834
- Klagen vedrører:** Kontrolafgift på 750 kr. – klageren foreviste en kreditkortkvittering, da han havde glemt Jojo-kort og "laddningskvitto" derhjemme
- Parternes krav:** Klageren ønsker kontrolafgiften nedsat til prisen for en enkeltbillet fra Christianshavn st. til Malmø C
- Indklagede afviser at nedsætte kontrolafgiften
- Ankenævnets sammensætning:** Nævnensformand, landsdommer Tine Vuust
Niels Martin Madsen
Torben Steenberg
Bjarne Lindberg Bak
Rikke Frøkjær

Ankenævnet for Bus, Tog og Metro har på sit møde den 21. december 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 betalingsoplysninger 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 var indehaver af et Jojo-kort Period Öresund med gyldighed fra 19. juni 2017 til 18. juli 2017, rejste den 21. juni 2017 med Metroen i retning mod Lufthavnen st., da der var kontrol. Da klageren havde glemt Jojo-kortet og "laddningskvittot" derhjemme, foreviste han kreditkortkvitteringen for køb af Jojo-kortet, hvorefter han kl. 17:08 blev pålagt en kontrolafgift på 750 kr. for manglende forevisning af gyldig rejsehjemmel.



Kreditkortkvittering

Klageren anmodede samme dag kl. 18:37 Metro Service om at nedsætte kontrolafgiften til prisen for en billet fra Christianshavn st. til Malmø C. med den begrundelse, at Jojo-kortet var gyldigt på kontroltidspunktet, og at han ikke forsøgte at snyde, men blot havde glemt Jojo-kortet hjemme. Klageren medsendte kopi af Jojo-kortet og "laddningskvittot".



Jojo-kort og "laddningskvitto"

Metro Service fastholdt den 23. juni 2017 kontrolafgiften med henvisning til selvbetjeningsprincippet og til, at Jojo-kortet kun er gyldigt i Metroen, hvis kortet forevises sammen med kvitteringen. Metro Service henviste endvidere til at efterfølgende forevisning af upersonlige billetter ikke accepteres, ligesom forevisning af kvitteringer og bankudskrifter accepteres som billet.

ANKENÆVNETS BEGRUNDELSE:

Klageren kunne i kontrolsituationen ikke forevise gyldig rejsehjemmel, idet han alene var i besiddelse af en kreditkortkvittering for køb af et Jojo-kort. Kontrolafgiften blev derfor pålagt med rette.

Et Jojo-kort er upersonligt, idet kortet ikke indeholder billede eller personlige oplysninger, og kortet kan sammen med "laddningskvittot" anvendes af ihændeberen i lighed med et rejsekort anonymt eller en almindelig billet.

Klagerens efterfølgende indsendelse af en kopi af Jojo-kortet og "laddningskvitto", der dokumenterede kortets gyldighed i perioden 19. juni 2017 til 18. juli 2017, kan derfor efter ankenævnets faste praksis ikke føre til et andet resultat, da efterfølgende forevisning af upersonlige billetter/kvitteringer ikke kan tages i betragtning ved bedømmelse af, om der ved kontrollen blev forevist gyldig rejsehjemmel.

Ankenævnet finder herefter, at der ikke har foreligget sådanne særlige omstændigheder, at Metro Service skal nedsætte eller frafalde 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.

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.

Uddrag af de fælles landsdækkende rejseregler:

"2.7.6. Betaling

Selskaberne kan erstatte kontrolafgiften med et ekspeditionsgebyr på 125 DKK mod samtidig betaling af den ordinære billetpris, hvis særlige forhold gør sig gældende."

Fra Skånetrafikens hjemmeside:

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Jojo Period Öresund

Månadskortet Jojo Period Öresund ger dig möjlighet att resa så mycket du vill över Sundet. Det lönar sig att köpa kortet redan när du reser mellan sju och tio dagar på en månad.

- Jojo Period Öresund gäller 30 dagar i följd med valfritt startdatum. Du bestämmer själv i vilka områden kortet ska gälla.
- Inom området du valt kan du kan resa så mycket du vill med alla våra bussar och tåg. På den danska sidan reser du med DSB:s tåg, Movias bussar och Metron i Köpenhamn.
- När du reser med Jojo Period Öresund behöver du alltid visa ditt kort tillsammans med laddningskvittot.

Köp och ladda Jojo Period Öresund här:

- Du kan köpa Jojo Period hos våra kundcenter och serviceombud.
- När 30-dagarsperioden har gått ut kan du själv ladda på kortet igen. Ladda i våra biljettautomater på tågstationer, hos kundcenter och serviceombud eller med bankkort på regionbussarna.
- Registrera ditt kort med våra **E-tjänster** så får du förlustgaranti. Det innebär att om du tappar ditt kort kan du spärra det och då ersätter vi dig med samma värde. Tänk på att du först måste skapa ett konto hos oss för att kunna logga in och registrera kortet.

”

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører følgende:

” I had forgot my JoJo period card at home. I have been travelling as part of the commute to work and back. I use the metro / Oresundtrain on a daily basis. My intention has never been to dodge a fare, as I have paid for a 1st class ticket since September last year. On this occasion I was told that even I had a card I would not be allowed to travel on the metro. I do not think it is fair to give me a fine for 750DKK. It would be more appropriate that I pay for what the ticket would cost from Christianhavn to Malmo. I would accept a fare if I did not hold a JoJo period card and my intention was to dodge the fare. But since I forgot it on this occasion I thought that I had to show the JoJo period card and online account to show proof that I held a period card. I have now learnt that I have to pay for a single ticket before starting the journey. I also received some degrading comments from the controller. I will accept the fare if I am judged to have intentionally dodged the fare.”

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 was met by a steward inspecting tickets on the 21th of June 2017 at 16:58 between Lergravsparken station and Lufthavnen (airport) station . The complainant had no card or ticket but showed a receipt for a payment to ORESUNDSKORT BRO 1KL., explaining to the steward that he had forgotten his Jojo card. As the complainant was not able to present a valid ticket a fare evasion ticket was issued, according to the travel regulations.

It is Skånetrafiken in Sweden that issues Jojo cards and on their homepage <https://www.skånetrafiken.se/sa-reser-du-med-oss/jojo-kort/> one can read this:

Jojo Period Öresund

Månadskortet Jojo Period Öresund ger dig möjlighet att resa så mycket du vill över Sundet. Det lönar sig att köpa kortet redan när du reser mellan sju och tio dagar under en månad.

- Jojo Period Öresund gäller 30 dagar i följd med valfritt startdatum. Du bestämmer själv i vilka områden kortet ska gälla.
- Inom området du valt kan du reser så mycket du vill med alla våra bussar och tåg. På den danska sidan reser du med DSB:s tåg, Movias bussar och Metron i Köpenhamn.
- När du reser med Jojo Period Öresund behöver du alltid visa ditt kort tillsammans med laddningskvittot.

Köp och ladda Jojo Period Öresund här:

- Du kan köpa Jojo Period hos våra kundcenter och serviceombud.
- När 30-dagarsperioden har gått ut kan du själv ladda på kortet igen. Ladda i våra biljettautomater på tågstationer, hos kundcenter och serviceombud eller med bankkort på regionbussarna.

Vad kostar kortet?

Hitta periodkortspriset | Avancerad sök

Se även priserna i våra exempel. Ett nytt Jojo-kort kostar 20 kronor i kortavgift.

A Jojo card is an impersonal ticket with no name and no picture on it and the Jojo card is only valid as a ticket for the card holder on the time of inspection and only on the condition that the card itself and 'laddningskvittot' for the specific card is presented at the very same time. Subsequent presentation of impersonalized tickets and cards are not accepted, nor are bank statements.

When the complainant was inspected he was not in possession of neither the Jojo card itself nor the above mentioned 'laddningskvittot', but only a MasterCard receipt.

In his inquiry to the Board of Appeal, the complainant writes that in the control situation he was told by the steward 'On this occasion I was told that, even if I had a card, I would not be allowed to travel on the metro.'

We have already regretted if the complainant did not feel politely treated by the steward. However, as evidenced by the electronic fare evasion ticket, the steward has made a note that pax did not want to cooperate and was very dissatisfied with having to receive a fine. We must also state that the steward concerned has been employed by Metro for several years without customer complaints.

Of course, we were not present in the control situation and therefore cannot determine how the words have fallen, but since neither Jojo card nor 'laddningskvittot' appeared in the control situation, it has not been possible for the steward to decide whether the card that Pax explained to have forgotten at home was valid in the metro or not.

As a Jojo card is an impersonal travel document, a subsequent presentation cannot be accepted why we maintain our claim on the fare evasion ticket no [xx] of 750,- DKK.”

Klageren har hertil bemærket følgende:

”The answer is that I still want to proceed. I do not want the case to be against the controller, as I have met him since and during other circumstances we have both admitted that we could have dealt with the situation better. I can move on, even though I was incensed by some comments back then.

The refund I am expecting on the fee is that they look at what happens if a commuter realizes that the ticket is not there once they boarded a train. It could be that the commuter has dropped the ticket or else have been stolen of the ticket. In this case, I expect the metro service to look at my history of travels and give me an option to make a payment for a single ticket since clearly this was an honest case where I had forgot the ticket. It is unreasonable that as a commuter, you experience delays, cancellations, packed trains, sub-standard service, still paying extortionate money to travel with the Metro/DSB, and it seems there is a detach from the Swedish side who can quickly check if you have a monthly card or not (via the App). But since this is a Swedish / Danish co-operation this choice is not available. This would have circumvented the situation but since there is no way the controller can do this check, you end up with small physical card that you need to carry with you at all times. It is clear that DSB / Metro in these situations are taking advantage of being the single commuter service in Copenhagen.

I understand that penalty rules apply to everyone and you do not discriminate against passengers. But not all passengers are dodging the fare with intent. Before entering the train I even saw that the controller stepped into the train, and I could have decided not to enter the train if I had the intention. Instead I choose to enter as I was informed that a ticket was not required if you keep the payment receipt with you and can show the card purchase in the Skånetrafiken app. This advise was obviously incorrect, but this is something I did not know at the time.

As a principle - how you are treating customers should be the cornerstone for all service companies. In this case, a regular customer is still punished because of draconian rules where everyone is treated with suspicion. This would not be possible if Metro / DSB had not had the position of the only public travel service in Copenhagen. I also sent them photo evidence after 2 hours of the incident to prove I was in possession of the monthly card.”

Indklagede har hertil bemærket følgende:

”We are sorry that the complainant is convinced that Metro and DSB are taking advantage of being the single commuter service in Copenhagen.

Please allow us to explain that Metro Service A/S and DSB are two different companies and that there are also other traffic companies in Copenhagen.

And of course, we would like to emphasize that we certainly do not use our position as a public transport company to treat passengers badly.

However, the requirement for a valid ticket/card applies to all and unless a valid ticket/card is missing due to an error on our part, for good reasons, we cannot take into account why a passenger travels without having a valid ticket. So even though we regret that the complainant feels in a position where he should be treated differently than the other passengers, we do not see ourselves able to give special treatment to this case.

In view of the above, as well as to our previously submitted reply, we maintain the requirement for payment of fare evasion ticket number [xx] of DKK 750, -"

På ankenævnets vegne



Tine Vuust
Nævnensformand