

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer:	2017-0203
Klageren:	XX 2000 Frederiksberg
Indklagede:	Metroselskabet I/S v/Metro Service A/S
CVRnummer:	21263834
Klagen vedrører:	Kontrolafgift på 750 kr. for manglende tillægsbillet til periodekort
Parternes krav:	Klageren ønsker kontrolafgiften annulleret Indklagede fastholder denne
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 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 var indehaver af et periodekort til zonerne 01 og 02, rejste den 6. juli 2017 med Metroen i retning mod Lufthavnen st. Efter Femøren st., som er den sidste station i zone 03, før Metroen kører ind i zone 04, var der kontrol, og da klageren ikke kunne forevise rejsehjemmel for zone 03 og 04, blev han pålagt en kontrolafgift på 750 kr.

Klageren anmodede samme dag Metro Service om at frafalde kontrolafgiften. Han oplyste, at han var handicappet og havde et periodekort til zonerne 01 og 02 samt et rejsekort, som han ikke checkede ind, fordi han forsøgte at købe en tillægsbillet på sin mobiltelefon, hvilket imidlertid ikke lykkedes. Han havde vist det til stewarden, som ifølge klageren var ubehøvet og kom med racistiske udtalelser. Tre dage senere indsendte klageren desuden kopi af sit periodekort og rejsekort og oplyste, at det var som bevis for, at han var ærlig og ikke ville snyde.

Metro Service fastholdt kontrolafgiften den 10. juli 2017 under henvisning til selvbetjeningsprincippet, og til at passagerens intentioner og gode tro ikke kan tages med i betragtning. Metro Service anførte endvidere følgende:

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Thank you for contacting us regarding fine no. Firstly, please accept our apologies for your experience. It is very difficult to make the issue of a fine pleasant, however we should always be the good example, we want to and train our staff to be. We do not tolerate any racist or discriminating behavior, which is why, we will investigate the case internally.

Unfortunately we can't make an exception regarding your fine. The fine has been issued according to the travel rules, because you didn't have a valid ticket during ticket inspection. We haven't experienced problems with the app. If you have trouble purchasing the necessary additional ticket, you need to seek assistance or find another way to purchase a ticket (using the ticket vending machine), if you are in a hurry.

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Senere samme dag anmodede klageren igen Metro Service om at frafalde kontrolafgiften. Han henviste til de indsendte kopier af periodekort og rejsekort, og til at han havde billetter og ikke ville snyde, samt at problemet med at købe en tillægsbillet ikke skyldtes app'en, men netværksproblemer på hans mobiltelefon, da han ikke benyttede et dansk netværk, men et britisk. Han tilføjede, at han var handicappet, og at han selv havde henvendt sig til stewarden.

Metro Service oplyste, at de havde afsluttet sagsbehandlingen og henviste klageren til at indbringe sagen for ankenævnet.

Klageren skrev på ny til Metro Service og fremførte samme argumenter som oven for og videre, at hans hudfarve og fysiske fremtoning ikke burde kunne være årsag til, at han modtog denne behandling.

Metro Service fastholdt den 17. juli 2017, at sagsbehandlingen var afsluttet, og henviste igen klageren til at klage til ankenævnet.

ANKENÆVNETS BEGRUNDELSE:

Klageren kunne ved kontrollen i metroen den 6. juli 2017 i zone 04 ikke forevise gyldig rejsehjemmel, da hans periodekort kun var gyldigt i zonerne 01 og 02.

Klageren har oplyst, at han forsøgte at købe en tillægsbillet til sit periodekort, hvilket ikke lykkedes på grund af netværksproblemer.

Det fremgår af de fælles landsdækkende rejseregler, som var gyldige på tidspunktet for klagerens rejse, at tilkøb af zoner til den ordinære rejsehjemmel skal foretages, mens denne fortsat er gyldig og altså i zone 01 eller 02.

Da klageren derfor ikke havde gyldig rejsehjemmel til zonerne 03 og 04 blev kontrolafgiften pålagt med rette.

Den omstændighed, at klageren er handicappet og ifølge det oplyste havde netværksproblemer, kan ikke ændre på dette.

Det bemærkes, at pligten til at betale kontrolafgift ikke er betinget af, om passageren bevidst har forsøgt at unddrage sig betaling for rejsen. 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.

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 (gældende 15.01.17 – 31.10.17):

" 2.4. Brug af rejsehjemmel

Kunden skal ved modtagelsen af rejsehjemmel sikre sig, at det udleverede svarer til det ønskede. Kunden skal have gyldig rejsehjemmel ved indstigning herunder sikre sig, at rejsekortet er korrekt checket ind. Kunden kan forlænge rejsen ved et tilkøb af flere zoner til den ordinære rejsehjemmel. Tilkøbet skal foretages, mens den ordinære rejsehjemmel fortsat er gyldig. Regler for køb og brug af tilkøbsbillet følger de almindelige regler for køb af rejsehjemmel."

Fra DOT's hjemmeside:

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– Tilkøbsbillet

Har du gyldig billet eller pendlerkort og skal rejse i flere zoner, end billetten dækker, kan du købe en tilkøbsbillet til én ekstra zone. Skal du bruge mere end 1 zone, kan du købe det som almindelig enkeltbillet.

Læs mere om [tilkøb til enkeltbilletter](#).

Læs mere om [tilkøb til pendlerkort](#).

Du kan købe tilkøbsbilletten i bussen, i automaten på stationen eller som mobilbillet til iPhone eller Android.

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Pendlerkort til korte rejser (2-8 zoner)

[...]

Tilkøb

Du kan købe en tilkøbsbillet til dit pendlerkort til korte rejser. Hvis du køber en tilkøbsbillet i pendlerkortets gyldighedsområde er billetten gældende til det valgte antal **zoner** udenfor pendlerkortets gyldighedszoner. Hvis du køber en tilkøbsbillet udenfor dit pendlerkorts gyldighedsområde (fx til brug hen til dit gyldighedsområde) gælder billetten til den købte zone (ved køb af 1-zone billet) eller til den valgte zone og et antal **zoner** (efter samme princip for [enkeltbillet til korte rejser](#)).

Du kan købe en tilkøbsbillet i bussen, i automaten på stationen eller som mobilbillet til iPhone eller Android.

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PARTERNES ARGUMENTER OVER FOR ANKENÆVNEN:

Klageren anfører følgende:

” I'm disabled and boarded the tube in the direction of the airport. I had a valid monthly travel card for zone 1 and 2. Plus I had a pay as you go card. But in the train, I did not swipe my pay as you go card, I took the lift directly to the platform. Instead, I was trying to pay extra on my mobile app. I was experiencing issues as my phone is using a UK network. I showed it to the controller. I clearly explained everything to him, I showed him my different tickets and I showed him my network issue as well as my application. I really find it unfair as I do my best to be a good and respectful citizen

So far, I have experienced excellent service in the tube.

I provided all the evidence to the customer service who invited me to complain to the Appeal Board for Bus, Train and Metro.”

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 before boarding the train.

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 6th of July 2017 at 17:12 between Femøren station (zone 03) and Lufthavnen station (zone 04). The complainant presented a periodic card valid in the zones 01 and 02, and explained to the steward that he tried to buy a 2-zones supplementary ticket on his phone, but without luck. The complainant also showed that he was the owner of a personal rejsekort, which 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.

In his inquiries, the complainant stated that the steward was rude and made a racist comment. At Metro, we employ personnel originating from most of the world, and we tolerate no form of racism or any other form of discrimination. In our first response, we have sincerely apologized to the complainant and informed him that we take his description of the situation very seriously and have forwarded the case to the steward corps manager from which an internal investigation will take place. Even though we regret that the complainant has felt badly treated by the steward, our assessment is that this has nothing to do with the complainant not having a valid ticket.

In his inquiries, the complainant explains the following:

Hello, I'm disabled and boarded the tube in the direction of the airport. I had a valid monthly travel card for zone 1 and 2. Plus I had a pay as you go card. But in the train, I did not swipe my pay as you go card, I took the lift directly to the platform. Instead, I was trying to pay extra on my mobile app. I was experiencing issues as my phone is using a UK network. I showed it to the controller. I clearly explained everything to him, I showed him my different tickets and I showed him my network issue as well as my application. I really find it unfair as I do my best to be a good and respectful citizen

Alle billetter gælder til både havnebus, bus, tog og metro.

All tickets are valid for travel on harbour buses, buses, trains and the Metro.

Husk at have en gyldig billet, inden du står på – du kan ikke købe billetter i metrotoget.

Remember to have a valid ticket before boarding – you cannot buy tickets on a Metro train.

Using the 'DOT Mobilbilletter' app, you can buy tickets on your smartphone. Do not board the train until you have the ticket on your phone.

Using the 'DOT Mobilbilletter' app, you can buy personal season tickets on your smartphone.

At www.dinoffentligetransport.dk, you can buy tickets that you receive directly on your mobile phone.

You can also buy an SMS ticket:

1. Send an SMS (text message) with the name of the station of departure, the number of zones for your trip, and ticket type in Danish ('voksen' = adult, 'barn' = child, 'cykel' = bicycle, or 'tilkøb' = supplement). For example, 'Kongens Nytorv 2 voksen'.
2. Send the SMS to 1415. You will then receive an SMS with a confirmation of your order.
3. Confirm by replying with an SMS containing the text 'JA' (which means yes in Danish) to 1415. Please note: The ticket will be cancelled after 1 minute if you do not send a confirmation.
4. Do not board the train until you have received the ticket.

The price of an SMS ticket is the ticket price + your operator's standard SMS charge.

To travel using Rejsekort, you must:

- check in at the beginning of the trip
- check in each time you change to a new means of transport
- check out when your trip is completed

Your ticket is not valid if you do not check in at the beginning of the trip or when changing means of transport.

You can order a Rejsekort at www.rejsekort.dk, and you can buy a Rejsekort Anonymous and reload your Rejsekort at the Rejsekort machines at all Metro stations. Read more at www.rejsekort.dk.

It is cheaper to travel by Rejsekort than by purchasing a single ticket. In addition, you receive a 20% discount if you travel on weekdays between the hours of 11:00am - 1:00pm or 6:00pm - 7:00am, and all day on Saturdays, Sundays and holidays. The discount does not apply to all kinds of Rejsekort.

Please note that "check ind ekstra" stands are found at all stations, where you can use a Rejsekort to check in bicycles, children and additional passengers.

At www.rejsekort.dk, you can see how much money you must have on your Rejsekort to check in additional passengers.

Remember that you are responsible for ensuring that you have a valid ticket or valid card for the trip before boarding, both for you and any accompanying travellers. A penalty fare will be charged for travelling without a valid ticket or card.

A penalty fare will also be charged for travel using a pensioner pass outside of the valid hours and for travelling with a bicycle outside of the permitted hours – please note that continued travel with a bicycle during these hours will not be permitted. Travel with bicycles is not permitted on weekdays between the hours of 7:00 am - 9:00am and 3:30pm - 5:30pm, except in the months of June, July and August. Pensioner passes cannot be used for travel on weekdays between the hours of 7:00am - 9:00am.

Please refer to www.dinoffentligetransport.dk and the travel rules for the applicable penalty fares and additional information.

The periodic card shown by the complainant was valid for transportation in zones 01 and 02. When the complainant was checked, he found himself between zone 03 and 04 why his period card was no longer valid. The complainant also showed his personal rejsekort to the steward, but as the rejsekort was not checked in, it was not to be considered a valid ticket. If, like the complainant in the particular case, you choose to buy a ticket on your smartphone, you must not board the train until the ticket is received on the phone. If the complainant had complied with this rule, he would have known that he could not complete the mobile purchase, allegedly because his phone was affiliated with an English network before he boarded the train, thus avoiding receiving a control fee.

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, disabled, students or any other interest groups - apart from some disability organizations that previously has entered into special agreements for each of their members.

We must emphasize that we never distinguish between an intentional or unintentional mistake, but relate exclusively to the facts. Facts in this case is that the complainant did not have a valid ticket to the area where he was checked, why we maintain our claim for payment of control fee [xx] of DKK 750, -"

På ankenævnets vegne



Tine Vuust
Nævnetsformand