

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2017-0247
- Klageren:** XX på egne vegne og på vegne af ægtefællen YY og sønnen ZZ
Tyskland
- Indklagede:** Metroselskabet I/S v/Metro Service A/S
CVRnummer: 21 26 38 34
- Klagen vedrører:** Tre kontrolafgifter på i alt 2250 kr., da klageren og hendes familie ikke havde billet, men ved en fejl havde medtaget en tidligere kundes kvittering.
- Parternes krav:** Klageren ønsker kontrolafgifterne annulleret
Indklagede fastholder disse
- 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 tre kontrolafgifter på 750kr, i alt 2250 kr.

Beløbet skal betales 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.

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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.

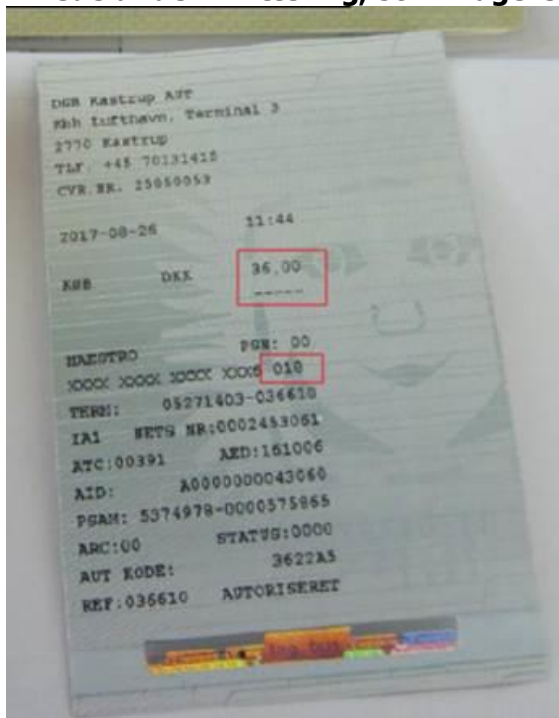
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SAGENS OMSTÆNDIGHEDER:

Klageren var sammen med sin ægtefælle og søn på en kort rejse i Danmark for at deltage i den anden søns dimission. Familien rejste den 26. august 2017 med metroen mod Kongens Nytorv st. og havde forinden i en DSB-automat i lufthavnen købt tre 3-zoners billetter til i alt 108 kr. Beløbet blev betalt med dankort, men de medtog ved en fejl en tidligere kundes kvittering for et billetkøb på 36 kr. og ikke deres egen billet.

Efter metroen havde forladt Lufthavnen st. var der kontrol af familiens rejsehjemmel, hvor de fremviste kvitteringen på 36 kr. Familienmedlemmerne blev herefter klokken 12:06, 12:09 og 12:12 pålagt hver en kontrolafgift på 750 kr. hver, i alt 2250 kr. for manglende billet.

Billede af den kvittering, som klageren medtog:



Klageren anmodede den 5. september 2017 Metro Service om annullering af kontrolafgifterne og anførte til støtte herfor følgende:

"We have bought a ticket for 3 persons at the airport via credit card. Pease find attached the credit card proof that the ticket has been paid. (DKK 108 for 3 tickets). Unfortunately we have taken a receipt from the machine that has been printed for the person who has bought a ticket before us which we have not checked properly. So we have paid for the fair, only we could not show the correct ticket., since it was still in the ticket machine. "

Klageren vedlagde desuden en bankudskrift, som viste, at der blev købt for 108 kr. i en DSB-billetautomat i Kastrup.

Metro Service fastholdt den 7. september 2017 kontrolafgiften med henvisning til selvbetjeningsprincippet, samt at det ikke er muligt at få en kontrolafgift afskrevet på baggrund af en kontoudskrift.

ANKENÆVNETS BEGRUNDELSE:

Klageren, hendes ægtefælle og deres søn kunne ved kontrollen i metroen den 26. august 2017 ikke forevise gyldig rejsehjemmel, da de ved en fejl havde medtaget en tidligere kundes kvittering og ikke deres egen billet. Kontrolafgifterne blev hermed pålagt med rette.

Den omstændighed, at der efterfølgende er fremlagt bankudskrift, kan efter ankenævnets faste praksis ikke føre til et andet resultat, da billetten skal kunne forevises på forlangende ved kontrollen.

Pligten til at betale kontrolafgift er ikke betinget af, om passageren bevidst har forsøgt at unddrage sig betaling for rejsen, og da dette er et område med mulighed for omgåelse af reglerne om at kunne forevise gyldig rejsehjemmel, er det ankenævnets opfattelse, at ikke har foreligget sådanne særlig omstændigheder, at klageren med familie skal fritages for kontrolafgifterne.

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.

I de dagældende fælles landsdækkende rejseregler, som trafikvirksomhederne har vedtaget, fremgår hjemmelen til udstedelse af kontrolafgift. 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.

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører følgende:

”

We ordered 3 tickets at the ticket machine at the Kopenhagen Airport. We were in a hurry since we had to be at our son Henrik`s graduation ceremony at Kopenhagen Business School to get his testimony. Also there was a long line to get the tickets.

We took the ticket from the machine, but unfortunately the receipt/ticket which came out from the machine must be from the person who has bought a ticket before us and we have not checked it properly.(see attachment) This seems to be a defect with the ticket machine, since it came out of the machine after our transaction. We were not familiar between the difference of a ticket or the receipt for the payment.

Immediately after the purchase I got the message to my mobil phone that the amount had been debited. (see attachment) So we have paid for the fair, only we could not show the correct ticket, since it was still in the machine and we didn` t recognize this fact.

We have fully paid, which we can prove with the attached documents and we are not willing to pay the fare evasion tickets, since there is absolutely no damage or loss to the company and no intent on our side.

In case you need further information or documentation, please let us know. Thanks in advance for your help. ”

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 <https://dinoffentligetransport.dk/media/2561/faelles-landsdaekkende-rejseregler.pdf> as well as on our information boards which are placed at every station. The information boards contain travel information in both English and Danish.



Kontrolafgift

Penalty fares

Husk, at det er dit ansvar inden påstigning at have gyldig billet eller gyldigt kort til rejsen for både dig og dine eventuelle ledsagere.

Manglende billet eller kort samt rejse i spærretiden for dem, der rejser på pensionistkort eller med cykel, medfører en kontrolafgift, og videre rejse med cykel i spærretiden er ikke tilladt. Spærretid for cykler er alle hverdage kl. 7-9 og kl. 15:30-17:30 undtagen i juni, juli og august. For pensionistkort er spærretiden alle hverdage kl. 7-9.

Vi henviser til www.dinoffentligetransport.dk samt rejse-reglerne for gældende satser på kontrolafgifter og yderligere information.

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.

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 and her two companions was met by a steward inspecting tickets on the 26th of August 2017 at app. 12:06 between Lufthavnen station and Kongens Nytorv station. The company of three presented receipt from a DSB ticket vending machine but no tickets. As the company was not able to present valid tickets, a fare evasion ticket was issued to each of them, according to the travel regulations.

The complainant explains that the company bought 3 tickets for a total of DKK 108,- in a ticket machine at the airport, but that due to queue and because they were in a hurry they did not check that the piece of paper they took from the machine corresponded to what they expected to receive.

On the photo taken by the steward (see below), one can see that the complainants showed a receipt of DKK 36, - referring to a Maestro credit card ending with the number 6018. If the complainants had checked the piece of paper they took, they would immediately have been able to note that the amount on the receipt did not match the amount they had just approved at the payment terminal.



A ticket is not personalized with a name or a photograph of the ticket holder and is therefore only valid for the holder at the time of inspection, subsequent presentation is not accepted and for the same reason nor a bank statement can be accepted.

When handling cases regarding fare evasion tickets we do not take into consideration whether the lack of a valid ticket is due to a conscious or unconscious act. Since we want to treat all passengers equally, we only consider the fact that it is the customer's responsibility - before boarding the train - to secure a valid ticket, which can be presented on demand.

Even though we understand that one can be busy, we do not think it may be an excuse for not having valid tickets before boarding.

Based on the above we find the fare evasion tickets correctly issued as the complainant and her company could not present any tickets when asked for, which is why we maintain our claim on fare evasion ticket no. xxx, xxx and xxx of each DKK 750,- a total of DKK 2.250,-

In conclusion we would like to draw the attention to earlier complaint cases similar to this one and in which the transport company was entitled to maintain the fare evasion tickets – please see complaint case 2012-0330, 2012-0297, 2014-0014 and 2016-0012. "

Afslutningsvist har klageren anført:

I see your point that you have certain rules within your systems of public transportations, which I fully accept. This is not different in our country.

Therefore I think it is important to see the cases individually, when someone is braking the rules. Our case was:

- We didn´t do it on purpose
- We paid the full price for the fare, the carrier has not have any damage.
- We just made the mistake not to check the ticket that came out of the machine

But People make mistakes and I think it is a very good thing that you have the appeal board to judge these exceptions on an objective base.

We would like to come back to Denmark once with a positive attitude, so we are reall looking forward to a positive decision of our appeal board "

På ankenævnets vegne



Tine Vuust
Nævnensformand