

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer:	2017-0253
Klageren:	XX 21620 Malmö
Indklagede: CVRnummer:	Metroselskabet I/S v/Metro Service A/S 21263834
Klagen vedrører:	Kontrolafgift på 750 kr. for manglende forevisning af billet sammen med et "Jojo-kort reskassa"
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 19. februar 2018 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.

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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 er hollænder og midlertidigt bosat i Sverige, rejste den 28. august 2017 fra Malmø til København og retur igen samme dag. Ifølge klageren købte hun en billet til rejsen på Hyllie st. i Malmø med sit Jojo-kort Reskassa og blev i den forbindelse anvist at lægge kortet på billetautomatens læser for at uploade billetten.

Jojo-kort Reskassa udstedes af Skånetrafiken og er et upersonligt rejsekort, som kan tankes op og bl.a. kan anvendes til at købe billetter med rabat til busser og tog i Skåne samt til rejser til og fra København. Når kortet anvendes til rejser til København, skal det for at udgøre gyldig rejsehjemmel vises sammen med den printede billet.

Da klageren var på vej retur mod Malmø, var der kontrol i Metroen efter Sundby st. Hun foreviste sit Jojo-kort, men da hun ikke sammen med kortet kunne forevise en printet billet, blev hun pålagt en kontrolafgift på 750 kr.

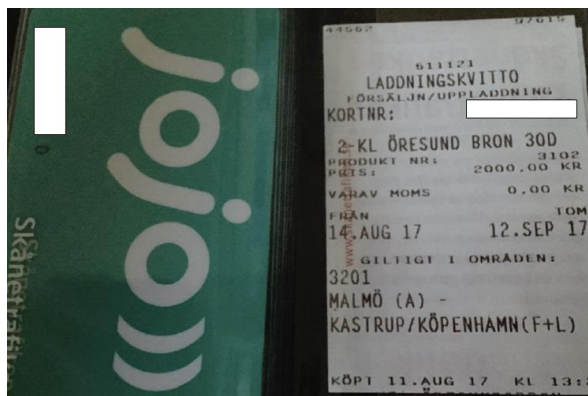
Stewarden har noteret følgende på den elektroniske kontrolafgift:

" <Note>kun yoyo kort, ingen billet</Note>"

Stewarden tog endvidere med sin PDA et foto af klagerens Jojo-kort samt en kvittering for påfyldning af 200 skr. på kortet og en kvittering for et kortgebyr på 20 skr.



Senere samme dag anmodede klageren Metro Service om at fratage kontrolafgiften med den begrundelse, at hun ikke havde kunnet finde kvitteringen til Jojo-kortet i sin taske. Klageren fremsendte kopi af en kvittering (laddningskvitto) for et "Jojo Period Öresund" sammen med kopi af et Jojo-kort, som hun angav at være det Jojo-kort, som hun havde rejst på. Det var imidlertid ikke det samme Jojo-kort, som stewarden havde taget et foto af i kontrolsituationen.



Metro Service fastholdt den 30. august 2017 kontrolafgiften med henvisning til selvbetjeningsprincippet og anførte, at et JoJo-kort er upersonligt, hvorfor det ikke kan indsendes efterfølgende:

”

You have been issued a fare evasion ticket, as you were unable to present a valid ticket or travel card, when you were subject to ticket inspection in the Metro.

Usually, it is possible to have a fare evasion ticket reduced, if you send in a copy of a personalized, valid ticket or travel card no later than 14 days after the fare evasion ticket was issued.

A JoJo-card, which is what you have sent us, is an anonymous travel card that can be shared. The JoJo-card is only valid for the person, who has the travel card in their possession, and can show it upon inspection. As such, we do not accept subsequent presentation of these.

”

ANKENÆVNETS BEGRUNDELSE:

Et Jojo-kort er upersonligt og således gyldigt for ihændeholderen. Det fremgår af oplysningerne på Skånetrafikens hjemmeside, at der kan købes billet til Danmark med Jojo-kort, og at passagerer, som rejser til Danmark på Jojo-kort, skal huske at medbringe en udskrevet billet på rejsen.

Klageren var ikke i besiddelse af en udskrevet billet, som hun kunne forevise sammen med det upersonlige Jojo-kort Reskassa, og hun havde således ikke gyldig rejsehjemmel i kontrolsituationen. Kontrolafgiften blev derfor pålagt med rette.

Den omstændighed, at klageren efterfølgende har indsendt kopi af et andet Jojo-kort (Jojo Period Öresund) med kvittering (laddningskvitto) for perioden 14. august 2017 til 12. september 2017, kan efter ankenævnets faste praksis om efterfølgende indsendelse af upersonlig rejsehjemmel ikke medtages i bedømmelsen af, om klageren var i besiddelse af gyldig rejsehjemmel på tidspunktet for kontrolafgiftens udstedelse.

Ankenævnet har ved afgørelsen heraf lagt vægt på, at dette er et område med oplagt mulighed for omgåelse af reglerne om at kunne forevise gyldig rejsehjemmel ved kontrollen, hvis det accepteres, at upersonlig rejsehjemmel kan indsendes efterfølgende.

Klageren har gjort gældende, at hun i købsituationen kun fik oplyst, at hun skulle lægge Jojo-kortet på salgsautomatens scanner for at uploade billetten til kortet, hvorfor hun ikke var opmærksom på, hvad hun gjorde ved den printede billet. Det er ankenævnets opfattelse, at Metro Service ikke kan gøres ansvarlig for, hvis Skånetrafikens ikke giver oplysning i deres salgsautomater om, at

der skal medbringes en udskrevet billet. Ankenævnet finder det endvidere naturligt, at en passager, som i en automat køber en billet, medtager billetten/kvitteringen.

Ankenævnet bemærker, at det ikke kan ændre på resultatet, at stewarden som oplyst af klageren skulle have sagt, at billetten kunne indsendes til Metro Service efterfølgende, da klageren ikke har indsendt billetten til det Jojo-kort, som hun foreviste ved kontrollen.

Herefter findes der ikke at foreligge sådanne særlige omstændigheder, at klageren skal fritages for betaling af 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.

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.

Om Jojo-kort fra www.skanetrafiken.se:

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Jojo travel funds

Jojo travel funds is a travel card that you load with money. When you buy a ticket with the card you get a discount. Jojo travel funds suit those traveling by bus or train and then.

With Jojo traveling funds, you can buy a ticket to:

- all our buses and trains in Skåne and to and from Denmark,
- all our trains and buses across the county border to Blekinge, Halland, Kronoberg and Jönköping. Travel with Öresundståg to Kalmar and Gothenburg C.

Jojo travel funds is not personal.

Buy and download Jojo travel funds here:

- Use our **E-Services** - purchase Jojo travel funds preloaded with 50 or 200 kronor or charge card you have at home with any amount from \$ 50.
- Customer service center and service center - purchase or download Jojo travel funds with any amount.
- In our ticket machines at train stations, you can download Jojo travel funds with eight different amounts, 10, 50, 100, 200, 300, 400, 500, 1,000.
- Agent - Buy Jojo travel funds preloaded with 50 or 200 kronor.
- Regional bus - download Jojo travel funds with any amount from \$ 50.
- A new Jojo card costs \$ 20 in card fee.
- Register your card with our **E-Services** to get the deficiency. That means if you lose your card, you can block it and then we will replace them with the same value. Remember that you must first create an account with us in order to sign in and sign the card.

Off Jojo travel funds

- When traveling with Jojo traveling funds will get a 10 percent discount.

See balance on the card

- The ticket machines
- The bus reader
- At the customer center and service center
- Use our e-services

Denmark - so you travel

To and from Denmark travel with several of our cards and tickets. Do you want a return trip to Copenhagen, for example? Buy a return ticket valid for 24 hours. Travel on the same ticket, even if you made a brief stop and travel further with public transport.

- Buy tickets at our ticket machines at train stations in southern Sweden, at Copenhagen airport and the main rail yard in Copenhagen.
- You can buy a ticket with a Jojo card or debit card. But do not forget to bring with you a printed paper ticket when traveling with your Jojo card to Denmark. There are paper tickets valid at ticket control!
- Remember that the SJ ticket for SJ train does not apply to Skånetrafikens Öresund.
- There are border controls from Denmark to Sweden - bring photo ID if you are traveling over the Öresund Bridge.

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører følgende:

"This receipt was shared the very same day with Metro via their appeal form. In their reply they indicate: "A JoJo-card, which is what you have sent us, is an anonymous travel card that can be shared. The JoJo-card is only valid for the person, who has the travel card in their possession, and can show it upon inspection. As such, we do not accept subsequent presentation of these."

But what was sent to them through their appeal form was not a random JoJo card, but the JoJo card that was already presented at the time of control as well as the missing monthly receipt, proof that there was no fare evasion. It can also be verified that this card was used and controlled without issues during the travels across the Øresund bridge the same day."

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

In the case in question, the complainant was met by a steward inspecting tickets on the 28th of August 2017 at 13:32 between Sundby station and Ørestad station. The complainant showed a Jojo Card but not the obligatory charge receipt, which shows that the payment has been paid for the period and the area in which the card is applicable (in this case the Øresund area). As the complainant thus did not have a valid travel document, a fare evasion ticket was issued in accordance with applicable rules.

A Jojo card is an impersonal travel document and is therefore valid only for the holder at the time of inspection and only if the Jojo card and the valid charge receipt are displayed at the same time. Subsequent presentation of impersonal travel documents is not accepted as a valid travel document in accordance with the applicable rules.

It is Skånetrafiken, which sells Jojo cards. The fact that a Jojo card is impersonal is clearly described on Skånetrafikens website, see below.

- Jojo Period finns för resor inom Skåne och över länsgränserna till Blekinge, Halland, Kronoberg, Kalmar län och till Danmark.

- Kortet är inte personligt.

- Jojo Period are for travel in Skåne and the county border to Blekinge, Halland, Kronoberg, Kalmar and Denmark.

- The card is not personal.

<https://www.skanetrafiken.se/sa-reser-du-med-oss/jojo-kort/>

As a Jojo card, as mentioned, is a type of travel document without name and photo and therefore can be used by anyone at any time, a subsequent presentation will not be accepted, even if the complainant, as in the specific case, sends an inquiry the same day she has received the check charge.

In connection with the complainant's inquiry to us, she attached a photo of a Jojo card with the accompanying charge receipt, and in her complaint to the Appeal Board, the complainant writes "*But what was sent to them through their appeal form was not a random JoJo card, but the JoJo card that was already presented at the time of control*".

We are very surprised at this explanation; because when comparing with the photo taken by the steward, the two Jojo cards are different with two completely different serial numbers, and therefore we do not take the complainant's information that the card was "*used and controlled without issues during the same day*" into consideration. See the photos below:



So in addition to the fact that the obligatory charge receipt was not shown in the control situation, the Jojo card that the complainant has sent a copy of, is not identical to the card she showed to the steward. In addition, we wonder that the complainant informed the steward that she is resident in the Netherlands when the complainant informs a Swedish address to the Appeal Board. See attached 'Fotos fra PDA'.

Considering the above we maintain our claim for payment of fare evasion ticket no. [xx] of DKK 750,-

Finally, we must draw attention to previous comparable complaints (2014-0306, 2016-0033, 2016-0138 and 2017-0101), where the decisions was made in favor of the respondent company."

Hertil har klageren bemærket:

" In reply to your last message the following:

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.

I understand the above clearly but surely there should also be understanding for the fact that my ticket was purchased at Malmö Hyllie station in Sweden, where I was simply instructed by the machine to place my yoyo card on the reader to load the ticket. In the Netherlands we use the OV chipkaart and this works similarly, we do not need receipts. This is also the reason for which I didn't pay much attention to where I had put it, as all other times I used this train was to go from Kastrup to Malmö and train conductors simply used a reader to scan the card.

Because I needed to visit the consulate on this specific occasion I made use of the Metro which is included in the ticket, and I was under the impression that those conductors would be able to use the readers on the yoyo cards, expecting it now appears erroneously that cross border transportation would be more streamlined.

A Jojo card is an impersonal travel document and is therefore valid only for the holder at the time of inspection and only if the Jojo card and the valid charge receipt are displayed at the same time. Subsequent presentation of impersonal travel documents is not accepted as a valid travel document in accordance with the applicable rules. It is Skånetrafiken, which sells Jojo cards. The fact that a Jojo card is impersonal is clearly described on Skånetrafikens website, see below.

If your `trained` staff would have informed me of the above, I would have perhaps checked my bag more thoroughly. As she mentioned I could simply appeal and send in the receipt by email, I took this as valid information.

In connection with the complainant's inquiry to us, she attached a photo of a Jojo card with the accompanying charge receipt, and in her complaint to the Appeal Board, the complainant writes "But what was sent to them through their appeal form was not a random Jojo card, but the Jojo card that was already presented at the time of control ". We are very surprised at this explanation; because when comparing with the photo taken by the steward, the two Jojo cards are different with two completely different serial numbers, and therefore we do not take the complainant's information that the card was "used and controlled without issues during the same day" into consideration. See the photos below: So in addition to the fact that the obligatory charge receipt was not shown in the control situation, the Jojo card that the complainant has sent a copy of, is not identical to the card she showed to the steward.

My husband and I both own a yoyo card. Both of us crossed the bridge that day, and indeed because they do not have a name I sent a picture of the wrong one. If you had the ability to check you can see that both were used that morning from Hyllie, but as per your arguments above, it would seem that wouldn't make a difference.

In addition, we wonder that the complainant informed the steward that she is resident in the Netherlands when the complainant informs a Swedish address to the Appeal Board. See attached 'Fotos fra PDA'.

I am a citizen and resident of the Netherlands. I asked the steward if she wanted my official address or the address where I was staying temporarily in Sweden, and simply complied with her request. For the sake of full disclosure I provided the address where I was staying in Sweden at the time of the infraction and appeal."

Hertil har indklagede bemærket:

" We have carefully read the complainant's remarks, but do not believe that the complainant has provided the case with new information relevant to the case processing.

As explained in our previous reply, Skånetrafikens Jojo card is an impersonal card/ticket, and subsequent presentation is therefore not accepted. We refer again to the rules for using Jojo cards on the Skånetrafikens website, which you accept when using their products.

Considering the above and on the basis of our earlier response, we maintain our claim for payment of the fee of 750,- DKK"

På ankenævnets vegne



Tine Vuust
Nævnensformand