

## AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

<b>Journalnummer:</b>	2018-0240
<b>Klageren:</b>	XX på egne vegne og på vegne af sine familiemedlemmer England
<b>Indklagede:</b>	Metro Service I/S v/Metro Service A/S
<b>CVRnummer:</b>	21 26 38 34
<b>Klagen vedrører:</b>	4 kontrolafgifter på samlet 1.625 kr. efter at Metro Service har nedsat de oprindelige kontrolafgifter på 750 kr. grundet manglende check-ind af flere rejsende. Der kunne ikke ske check-ind, da saldoen på rejsekortet var for lav.
<b>Parternes krav:</b>	Klageren ønsker de nedsatte kontrolafgifter annulleret Indklagede fastholder disse
<b>Ankenævnets sammensætning:</b>	Nævnshoved, landsdommer Tine Vuust Torben Steenberg (2 stemmer) Asra Stinus Helle Berg Johansen

Ankenævnet for Bus, Tog og Metro har på sit møde den 6. marts truffet følgende

### **AFGØRELSE:**

Metro Service I/S v/Metro Service A/S er berettiget til at opretholde kravet om betaling af de samlede kontrolafgifter på i alt 1.625 kr.

Beløbet skal betales til Metro Service 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](http://www.domstol.dk), [www.advokatsamfundet.dk](http://www.advokatsamfundet.dk) og /eller eget forsikringssselskab om eventuel forsikringsretshjælp.

## SAGENS OMSTÆNDIGHEDER:

Klageren, som er bosiddende i England, skulle efter at have tilbragt en weekend i København den 7. oktober 2018 med sin mand, deres to voksne børn og disses partnere rejse med metroen fra Kongens Nytorv st. til Lufthavnen st. Ifølge klageren var der for lav saldo på hendes rejsekort anonymt til, at de alle seks kunne checke ind, hvilket fremgik af rejsekortstanderen ved forsøget herpå. Derfor købte to af dem en billet hver, mens de fire andre checkede ind på rejsekortet.

På strækningen mellem Amager Strand st. og Lufthavnen st. var der kontrol af familiens rejsehjemmel. Ved kontrollen viste det sig, at ingen af de fire passagerer var checket ind på rejsekortet, som klageren ellers troede. Da ingen af dem var checket ind på rejsekortet, blev de fire passagerer pålagt en kontrolafgift på 750 kr. hver mellem kl. 16:51 og 17:08

Klageren anmodede den 8.oktober 2018 Metro Service om at annullere kontrolafgifterne og anførte til støtte herfor, at de var i god tro og ikke havde i sinde at snyde, at de prøvede at checke ind på flere forskellige maskiner og søgte hjælp hos en dansk kvinde, at der var fejl på den første check-ind stander, at de lod flere tog til lufthavnen passere for at få styr på deres billetter, samt at der var en saldo på 253 kr. på rejsekortet, således at der var penge nok til at dække selve rejsen for dem alle fire, da selve rejsen kostede 36 kr. pr. person. Klageren bemærkede endvidere, at de var chokerede over stewarden og følte sig ekstra utilpasse, da han tilkaldte en kollega, da alle i toget kiggede på dem.

Metro Service fastholdt den 18.oktober 2018 kontrolafgifterne med henvisning til selvbetjeningsprincippet, at der ikke var checket ind på rejsekortet, at saldoen på rejsekortet var for lav til at checke fire personer ind på kortet, da forudbetalingen på et anonymt rejsekort er 70 kr. pr. voksen og, at det ville fremgå af standen, at der ikke var penge nok på rejsekortet til at checke fire personer ind, hvis man havde forsøgt på dette. Metro Service anførte endvidere, at hvis der havde været penge nok til at checke fire personer ind på rejsekortet, ville dette have været gjort forkert, da det af kortets historik fremgår, at klageren ved alle forsøgene på at checke ind alene havde checket én person ind og ud i alt seks gange. Den sidst foretagne handling var et check-ud. Metro Service anførte i forlængelse heraf, at det er muligt at ændre instruktionerne på check ind-standerne til engelsk samt, at der på alle stationer er givet information om, hvordan man kontakter kontrolcentret, der kan være behjælpelige med spørgsmål og køb af billetter.

**How to check in when bringing along others on your Rejsekort**

1. Press
2. Check in at the card reader by holding your Rejsekort in front of the blue light
4. Select adult, child, bicycle or dog using and select the numbers using   
**Remember to include yourself**
5. Complete your check-in by holding your Rejsekort in front of the blue light again

Your settings will return to your default settings when you check out.

Have a nice journey.

REJSEKORT



## Takstsæt Sjælland (Øst for Storebælt)

### Indhold

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### Bilag 1 - Forudbetaling ved start af rejse

Kundetype	Pris (kr)	1. kl. (kr)	Mellem landsdele (kr)	Mellem landsdele 1. kl. (kr)
Voksen - Rejsekort personligt	25,00	205,00		
Voksen - Rejsekort flex	25,00	205,00		
Voksen - Rejsekort anonymt	70,00	220,00	600,00	780,00
Barn - Rejsekort personligt	12,50	192,50		
Barn - Rejsekort flex	12,50	192,50		
Barn - Rejsekort anonymt	35,00	110,00	300,00	480,00
Pensionist	12,50	192,50		
Ung	25,00	205,00		
Handicap	12,50	192,50		
Cykel - Rejsekort personligt	13,00			
Cykel - Rejsekort flex	13,00			
Cykel - Rejsekort anonymt	13,00		75,00	
Hund - Rejsekort personligt	12,50			
Hund - Rejsekort flex	12,50			
Hund - Rejsekort anonymt	35,00		300,00	

Under den efterfølgende ankenævns sag besluttede Metro Service ekstraordinært, at nedsætte 3 af kontrolafgifterne til 125 kr. hver, således at det samlede skyldige beløb udgjorde 1.625 kr.

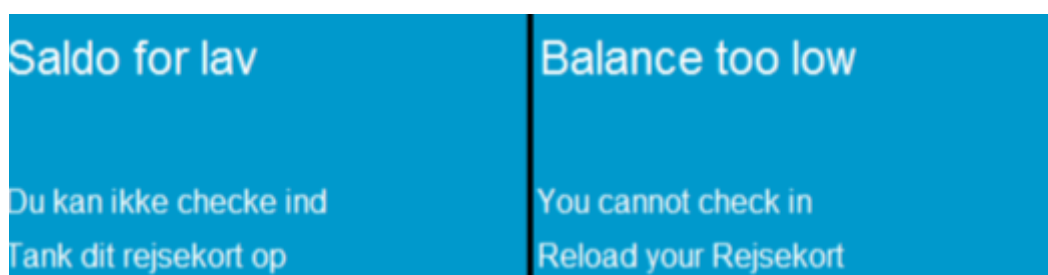
Klageren har efterfølgende over for ankenævnet gjort gældende, at hun og familien ikke ønsker at betale de nedsatte kontrolafgifter, at hun ikke var vidende om, at der er krav om forudbetaling på 70 kr. pr. person på et anonymt rejsekort, at hun og familien ikke ønskede at rejse uden gyldig billet, hvilket bl.a. understøttes af, at to af dem købte en almindelig billet, at der var penge nok på rejsekortet, til at tre af dem kunne være blevet checket ind, samt at der var 253 kr. på rejsekortet, hvilket var tilstrækkeligt til at dække rejsens faktiske pris for dem alle fire, og at de var på vej tilbage til London, og derfor ikke havde mere at bruge rejsekortet til. Desuden anfører klager, at man på videoovervågningen vil kunne se, at klageren og dennes familie flere gange forsøger at checke ind.

Metro Service har dokumenteret, at der ikke var fejl på check ind-standeren, men at denne stander ikke var en stander, hvorpå der kunne checkes mere end én person ind på rejsekortet. Metro Service har desuden fremlagt historik fra rejsekortet, hvoraf det fremgår, at der tidligere har været flere passagerer korrekt checket ind på dette kort

## SEKREARIATETS UNDERSØGELSER:

Metro Service har ved tidligere lignende sager oplyst følgende:

”Hvis man forsøger, at checke flere personer ind og kortsaldoen er utilstrækkelig til den specifikke handling vil beskeden på kortlæserens display være ” Saldo for lav”. Kundens handling vil heller ikke blive kvitteret med en besked om ”God rejse” suppleret af den positive ding-lyd.



Kortlæseren er ”uintelligent” hvilket vil sige, at den udelukkende kan forsøge, at udføre den ordre kunden giver. Så hvis kunden forsøger at checke flere/mere ind end der er saldo til, kan kortlæseren ikke vælge blot at checke den/det ind, der måtte være ’råd’ til. Man kunne måske forestille sig en situation hvor det ikke blot er to rejssende, der ønsker at checke ind – men en hel familie bestående af 2 voksne, 2 børn og 2 bedsteforældre (pensionister) og som måske også har en hund og nogle cykler med på rejsen.... så ville kortlæseren jo ikke kunne gennemskue hvem/hvad der skal checkes ind på rådighedssaldoen hvis der ikke var penge nok til hele selskabet. Så hvis der kun er råd til at checke én person ind og kunden ønsker at gøre dét – og evt. købe anden rejsehjemmel til den medrejsende – så skal kunden starte forfra og

lave et helt almindelig ind-check af én rejsende, eller sætte flere penge ind på rejsekortet og derefter checke hele rejseselskabet ind.”

### **ANKENÆVNETS BEGRUNDELSE:**

Ankenævnet har fra indklagede selskab modtaget oplysninger fra Back Office om denne sags konkrete rejse, som bekræfter oplysningerne på klagerens rejsekort om, at der ikke var checket ind, og at saldoen var for lav hertil.

På baggrund af det anførte, har ankenævnet ikke grundlag for at konstatere, at klageren havde checket sit rejsekort korrekt ind på den pågældende rejse, hvor kontrollen foregik, idet check-ind ikke var noteret på rejsekortet eller fremgår af oplysningerne i Back Office. Metro Service har indsendt dokumentation for, at den stander som klageren anvendte ikke var fejlbehæftet.

Det fremgår af rejsekort rejseregler, at rejsekort skal checkes ind ved rejsens begyndelse, og at det er passagerens eget ansvar at være checket korrekt ind.

Kontrolafgifterne for manglende check-ind blev derfor pålagt med rette.

Det er ikke en betingelse for at blive pålagt en kontrolafgift for manglende gyldig rejsehjemmel, at passageren har handlet bevidst. Det af klageren anførte om god tro kan derfor ikke føre til et andet resultat. Det kan heller ikke føre til et andet resultat, at saldoen på kortet, som udgjorde 253 kr. var nok til at betale for de konkrete fire rejser til lufthavnen, idet check ind på et rejsekort anonymt kræver en saldo på 70 kr. per rejsende – altså 280 kr.

Det 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.

På den baggrund og da Metro Service per konduite besluttede at nedsætte de tre af kontrolafgifterne efter interne administrative regler, er der ikke grundlag for yderligere nedsættelse eller annullering af kontrolafgifterne.

Ankenævnet bemærker, at kortholderen kan indstille sproget på rejsekortet til at være engelsk.

Ankenævnet anbefaler Metro Service sammen med parterne bag rejsekortet at se på, om der ved udstedelsen af rejsekort anonymt, som kun kan ske i en automat eller personligt betjent billetsalg, og som ofte sker til turister, kan gives tydeligere oplysninger om kravet til saldoens størrelse ved check ind per rejsende. Ankenævnet finder, at oplysningen bør gives eksplicit fremfor i en generel henvisning til rejsereglerne for rejsekort.

### **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 fælles landsdækkende rejseregler er der hjemmel til at udstede kontrolafgifter. Det anføres 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.

Passagerer, der ikke på forlangende viser gyldig billet eller kort, herunder korrekt ind-checket rejsekort, skal betale en kontrolafgift på 750 kr.

## **PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:**

### **Klageren anfører følgende:**

" We have made the following complaint and received the below reply which we like to appeal against.

We were a family of 6 from London who spent the weekend in Copenhagen, we had a lovely time until the below incident on Sunday the 7<sup>th</sup> October 2018

As you can see on our RejseKort record we attempted to check in correctly on two different machines, when using the first machine a Danish lady helped us and said the machine is not working so we then went to the second machine where we check in, we could see the message which said there was not enough money on the card so 2 of us went off to buy 2 tickets – **we would not have done this if we intended to travel without a ticket.**

We believed we had checked 4 people in. You can see on CCTV camera we let several trains pass while we sorted our tickets out, **we would not have done this if we were trying to travel without a ticket.**

There were 12 recordings on the Rejsekort report, so it is **very clear that we were not trying to avoid checking in.**

Our Rejsekort has 253 kroner on it, we have no more use for this as we are returning to London so keen to use it up, **this is another reason we were not attempting to travel without a ticket.**

I can now see on the report supplied that there were 253 kroner on the RejseKort.

I understand that a ticket would have cost 36 kroner each

After receiving the below reply I now understand that we may have had a problem as there has to have 70 kroner per person to check in, which means we were out by just 27 kroner.

**We fully believed we had checked in 4 people and as per the above explanation have no reason to travel without a ticket as we would have not taken all of the above actions if that were our intention.**

I ask you kindly to cancel our fines, we are happy for the Rejsekort to be cancelled which has 253 kroner on it which would cover the fares.”

### **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](http://www.m.dk) and on Din Offentlige Transport - <https://www.rejsekort.dk/~media/rejsekort/pdf/flr/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.

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 company of five was met by a steward inspecting tickets on the 7<sup>th</sup> of October 2018 at app. 17:00 between Amager Strand station and Lufthavnen station. 2 people in the total company of 6 people had tickets from the machine at Kongens Nytorv station, while the rest of the company together presented a rejsekort, but with no people checked in at the rejsekort at all. Since 4 out of 6 people did not have a valid ticket, the 4 people each received a fare evasion ticket according to applicable rules.

When we look at “Udskrifter fra Rejsekort A/”, we can see that the rejsekort was checked in 6 times and every time checked out again. The complainant explains in her inquiries that the company first tried to check in 2 times on one card reader but that a Danish lady told them that the reader did not work and that they therefore went to another card reader where they checked in 4 times (each time followed by a check out).

From the same attachment, you can see that the complainants' attempts are terminated with a check out every time and that no-one was checked in at inspection.

From Rejsekort A/S we have also received "Udstyrshistorik", which shows the two different check-in readers used by the complainants. We can see that the first card reader was not defective - it was simply the regular card reader - and not a card reader to make check-in by several travelers at once. The other card reader the complainants used were a 'check-in-extra' type. We have attached documentation that both card readers worked impeccably.

On the check-in-extra card readers, a guide has been set up - in both Danish and English - on how to check-in more people at one time (see below photos of CIE on Kongens Nytorv).

In addition to the instructions on the card reader you can also get help from a steward. Because the Kongens Nytorv station is a busy station in Copenhagen, it is staffed with uniformed personnel every day between 07.00-20.00, which gladly provides advice and guidance.

However, from both printouts from Rejsekort A/S, one can see that none of the check-in attempts have been started with by activating the check-in-feature because the first line of check-in-action would then have been started with a 0, 00 line (see example from February 2 and October 5 further down in the text).

The complainant explains that the company was definitely not trying to evade valid tickets but that it all was a mistake and if we just watch our CCTV, we can see that the company was standing by the card readers for a long time and trying to check in.

We must emphasize that we do not consider whether our passengers have deliberately attempted to evade a valid ticket, we relate exclusively to facts. It is correct that our stations are video-monitored, but we do not have permission to browse recorded material. And even though we could review recorded material, it would have no influence on the specific case as we do not take the passengers' intentions into consideration.

The rejsekort used by the company is of the type Anonymous. The specific card was sold and put into service back in 2015 and was previously used for travels with the same travel pattern as in October. We can also see that the card has previously been used for correct check-in of several travelers at once, in both February and October 2018, see below: [udeladt]

The prepayment for an adult on an anonymous rejsekort is DKK 70, -. That means that if you want to check in 4 adults, the balance on the card must be at least DKK 280. - If there is not DKK 280,- on the card, you cannot check in 4 adults, even though the price of the trip is likely to be lower than DKK 70,- per person. In the specific case, the complainant and the rest of the company were aware that the whole company of 6 people could not be checked in on the anonymous why 2 of the travelers bought tickets in a vending machine.

The balance on the card was at the time of departure from Kongens Nytorv station DKK 253, - How the company has reached the conclusion that only 2 of the company of 6 persons should purchase a separate ticket we do not know.

For good reasons, we can only relate to facts. The facts in this case are that none of the 4 adults who each received a fare evasion ticket were checked in on the rejsekort. It is thus beyond doubt that the fare evasion tickets are issued on the correct basis. We are therefore in our good right to maintain our full payment requirement of 4 x DKK 750, -

At Metro Service, we would like to provide good customer service and therefore, already in our response to the complainant on October 18, we have explained that we have written the daughter's (A.J.) fare evasion ticket down to 0.00 and have reduced the husband's (P.J.) fare evasion ticket to DKK 125 -. The fare evasion ticket to the daughter's boyfriend (G.F., who lives on another



address) and the fare evasion ticket to the complainant herself (J.J.) are maintained at their full amount, so that our total claim amounts to DKK 1,625, -

In conclusion, we should note that the family's rejsekort was checked in at the airport station on October 7th. 17:07:00 and that it has not been checked out again - the balance on the card is therefore DKK 183, -. See below: [udeladt]

For good measure, we note that Metro Service can in no way redeem the balance on the card."

### **Klageren anfører hertil:**

#### **"Our final remarks are as follows:**

As you have stated below you can see we attempted to check in 6 times,  
As you can see we have used the card before and checked in several people before on the card, we were in full belief that we were checked in before we boarded the train.  
At no time did we plan to evade the fare and we believe we were checked in before we boarded the train.

We never plan on travelling without a valid ticket on any form of transport in any country.

We checked in and out several times as it was only seeming to let us add one passenger, however on the last attempt we added four passengers and believed it went through and we were able to board the train all being checked in.

We were in full belief we were checked in.

We understand that you have explained that we checked out after checking in.

I would also like to add that once we were on the train and the ticket inspector came, he was very abrupt and gave us no chance to explain ourselves telling us to get off the train at the next stop and making us feel as if we had committed a serious criminal offence, which was extremely embarrassing in front of a full train of people.

Later on his colleague came over and was much more understanding.

The trip to Copenhagen was for a special family event, with a large gathering of our family, which we wanted to make special and memorable, we would certainly not plan on spoiling our trip by not paying for travel and leaving Denmark on a bad note.

As parents travelling with our children we would never endorse fare evasion in any situation.

We appreciate the information you have sent and we ask you kindly to reconsider our penalty charges."

### **Indklagede anfører hertil:**

"Please find enclosed our comments regarding the above mentioned complaint.

We have carefully read the complainant's last remarks, but do not think that new information has been brought to the case.

As we have already emphasized, we cannot relate to the intentions of passengers, but merely to facts, and the fact is that none of the four passengers had a ticket.

In similar cases, the Board of Appeals has previously stated:

The obligation to pay a fare evasion ticket is not conditional on whether the passenger has deliberately attempted to avoid payment for the journey, and as this is an area with the possibility of circumvention of the rules for the obligation of being able to present a valid ticket, and since it is the appeal boards opinion that it is sufficiently clear informed how to check in more than one passenger, there have been no such special circumstances that the passengers should be exempted from the fare evasion tickets.

With reference to the above, as well as to our previously submitted replies, we maintain our claim for payment of the fare evasion tickets according to our mail of November 12, 2018.”

På ankenævnets vegne

Tine Vuust  
Nævnformand