

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2019-0063
- Klageren:** XX
2300 København S
- Indklagede:** Metroselskabet I/S v/Metro Service A/S
CVRnummer: 21263834
- Klagen vedrører:** Kontrolafgift på 750 kr. grundet check ud og manglende check ind i stedet for at have foretaget et skiftecheck ind.
- Parternes krav:** Klageren ønsker, at ankenævnet annullerer kontrolafgiften, da hun har betalt korrekt pris for rejsen.
Indklagede fastholder kontrolafgiften
- Ankenævnets sammensætning:** Nævnshoved, landsdommer Tine Vuust
Rasmus Markussen
Torben Steenberg
Asra Stinus
Helle Berg Johansen

Ankenævnet for Bus, Tog og Metro har på sit møde den 11. september 2019 truffet følgende

AFGØRELSE:

Metro Service skal nedsætte kontrolafgiften til 10 kr. svarende til kontrolafgiften ved manglende skiftecheck ind.

Klageren skal betale beløbet til Metro Service, som sender betalingsoplysninger til klageren.

Da klageren har fået overvejende medhold i klagen, tilbagebetales klagegebyret, jf. ankenævnets vedtægter § 24, stk. 2.

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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 fx på www.domstol.dk, www.advokatnoeglen.dk og /eller eget forsikringssselskab om eventuel forsikringsretshjælp.

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SAGENS OMSTÆNDIGHEDER:

Klageren skulle den 24. februar 2019 rejse fra busstoppestedet Stefansgade i zone 02 til metrostationen Lergravsparken i zone 01, som ligger ved hendes bopæl. Hun steg på bussen kl. 16:29 og foretog check ind på sit rejsekort. Efter endt busrejse ved Frederiksborggade (Nørreport st.) checkede hun sit rejsekort ud kl. 16:36, inden hun skulle skifte til metroen. Ifølge klageren glemte hun muligvis at checke sit rejsekort ind igen på Nørreport st., da hun skulle hjælpe en mand med at finde vej.

Den korrekte måde at rejse med flere transportmidler på er at untlade check ud, men i stedet at foretage et såkaldt skiftecheck ind. Klageren har oplyst, at hun dog altid checker ud og ind, fordi transittidsreglen på 30 minutter gør, at hendes rejser slås sammen til én rejse, og prisen dermed beregnes korrekt alligevel.

Efter kontrol af klagerens rejsekort i metroen kl. 16:44 kunne stewarden ikke se noget check ind, og hun blev derfor pålagt en kontrolafgift på 750 kr. Kontrolafgiften blev udstedt fra Nørreport til Lergravsparken, hvor klageren oplyste at skulle af.

Ifølge klageren forklarede hun stewarden, at hun lige havde rejst med buslinje 5C, men denne rejse fremgik heller ikke af rejsekortet, da han undersøgte det.

Dette beror på, at der ved busrejser kan gå op til 24 timer, før rejsen logges i rejsekortsystemet og bliver synligt. Af rejsekorthistorikken fremgår det, at busrejsen blev logget kl. 05:02 den følgende morgen.

24-02-2019 11:16:56	24-02-2019 11:47:35	01-02-2019	Check ind	Check ind	308430 201 514 481 2	2122	794	Lergravsparken St.
24-02-2019 11:24:54	24-02-2019 11:47:04	01-02-2019	Check ud	Check ud	308430 201 514 481 2	2123	794	Nørreport St.
24-02-2019 11:37:17	24-02-2019 19:11:50	01-02-2019	Check ind	Check ind	308430 201 514 481 2	2124	794	Nørreport St.
24-02-2019 11:48:07	24-02-2019 19:11:49	01-02-2019	Check ud	Check ud	308430 201 514 481 2	2125	794	Nørrebrohallen
24-02-2019 16:29:44	25-02-2019 05:02:37	01-02-2019	Check ind	Check ind	308430 201 514 481 2	2126	795	Stefansgade
24-02-2019 16:36:57	25-02-2019 05:02:41	01-02-2019	Check ud	Check ud	308430 201 514 481 2	2127	795	Fr.borggade/Farimagsgade
24-02-2019 16:44:39	24-02-2019 17:00:33	01-02-2019	Kontrolmærke	Kontrol	308430 201 514 481 2	2127		Nørreport St.
24-02-2019 16:44:43	24-02-2019 17:00:33	01-02-2019	Kontrolmærke	Kontrol	308430 201 514 481 2	2127		Nørreport St.
24-02-2019 16:44:53	24-02-2019 17:00:33	01-02-2019	Kontrolmærke	Kontrol	308430 201 514 481 2	2127		Nørreport St.
24-02-2019 16:45:09	24-02-2019 17:00:33	01-02-2019	Kontrolmærke	Kontrol	308430 201 514 481 2	2127		Nørreport St.
24-02-2019 16:45:27	24-02-2019 17:00:33	01-02-2019	Kontrolmærke	Kontrol	308430 201 514 481 2	2127		Nørreport St.
25-02-2019 09:03:26	25-02-2019 09:18:22	01-02-2019	Check ind	Check ind	308430 201 514 481 2	2128	796	Lergravsparken St.

Transakt.date/kd.	Transakt. modtaget dato/kd.	Lokation	Udstyr / -nr.	Flinavn	Sekv.
24-02-2019 16:36:57	25-02-2019 05:02:41	Fr.borggade/Farimagsgade	VAL_54965 - 135833	1358331M.27E	21

Transaktionsdetaljer

Check ud

Kolonne	Værdi
Actionliste fejlkode	INGEN FEIL
Actionliste ID	0
Afgang	1609
Afstand dækket	2828
Afstand rejst	2828
Antal kundetype 1 i gruppe	1
Antal kundetype 2 i gruppe	
Antal kundetype 3 i gruppe	
Antal perioder	255
Antal zoner rejst	2
Antal zoner rejst	2
Applikationsstatus	Aktiveret
Basispris	16
Buslinjennr.	5C

Den samme eftermiddag anmodede klageren Metro Service om at annullere kontrolafgiften og anførte, at hun ikke kunne se de rejser, som hun havde foretaget tidligere samme dag i sin rejsekorthistorik, hvorfor der måtte være noget galt, og at hun muligvis ikke havde checket ind på Nørreport st.

Metro Service fastholdt kontrolafgiften den 27. februar 2019 med den begrundelse, at klagerens rejsekort ikke var checket ind på kontroltidspunktet, og at der kan gå op til 24 timer, før man kan se sine busrejser i systemet.

ANKENÆVNETS BEGRUNDELSE:

Ankenævnet har tidligere til baggrund anmodet Rejsekort A/S om at få nærmere oplysninger om procesforløbet/transaktionen mellem standeren og rejsekort, når kortet føres forbi standeren, og til standerens display viser teksten "OK god rejse". Ankenævnet har endvidere spurgt, om der foreligger undersøgelser eller oplysninger fra andre, der kan verificere Rejsekort A/S' udsagn om, at det hidtil ikke er forekommet, at rejsekort er checket korrekt ind, uden af dette er noteret på rejsekortet.

Rejsekort A/S har som svar herpå indsendt en redegørelse om rejsekortlæsernes virkemåde fra East/West, der leverer rejsekortsystemet, som har følgende konklusion:

"The overall conclusion is that the system is designed so that the validator will only show OK if the check in or check out was successful and data written to the card."

Efter det oplyste fra leverandøren af rejsekortsystemet er systemet designet, så det ikke skulle kunne lade sig gøre at se teksten "OK" på standeren, uden at dette er registreret på kundens rejsekort.

Ankenævnet har foranlediget Rejsekort A/S til at foretage en analyse af systemet og registrering af data. Rejsekort A/S har herefter gennemført en omfattende og grundig analyse af logning af mere end 30 mio. transaktioner. Analysen har vist, at alle transaktioner med rejsekortet, herunder for-

søg på check-ind eller check-ud, er registreret i rejsekortsystemet. Der er imidlertid fundet 341 forekomster af såkaldte "duplicate transactions", hvor den pågældende transaktion ved enten check-ind eller check-ud ikke blev gengivet på selve rejsekortet, men hvor transaktionen alene var registreret i Back Office.

Efter resultatet af denne analyse har ankenævnet ikke grundlag for at fastslå, at der foretaget check-ind på klagerens rejsekort, som ikke er registreret i back-office.

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 på klagerens rejsekort, men i stedet var foretaget et check ud efter endt busrejse med linje 5C.

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.

Ankenævnet bemærker, som også Metro Service har oplyst til klageren, at der kan gå op til 24 timer, før end kunder kan se deres busrejser i selvbetjeningsystemet.

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 under hele rejsen; hvilket også indebærer at foretage skiftecheck ind.

Kontrolafgiften for at rejsekortet ikke var checket ind blev derfor i selve kontrolsituationen pålagt med rette.

Imidlertid er det ankenævnets opfattelse, at der i den konkrete sag har foreligget sådanne særlige omstændigheder, at kontrolafgiften skal nedsættes til 10 kr. svarende til kontrolafgiften for manglende skiftecheck ind, der udgjorde 10 kr. ifølge de Fælles Landsdækkende Rejseregler punkt 2.7.2., som var gældende på kontroltidspunktet.

Ankenævnet har ved afgørelsen heraf lagt vægt på, at Metro Service Back Office ved klagens behandling kunne se af rejsekorthistorikken, at klageren checkede ind i zone 02 og checkede ud i bussen i zone 01, få minutter inden hun i zone 01 fortsatte rejsen med metroen. Hvis klageren havde husket at checke ind, ville rejsen ifølge "transittidsreglen" være blevet beregnet som en "fortsat rejse" til samme pris, som den reelt blev beregnet til, og som den ville være beregnet til ved korrekt skiftecheck ind.

Ankenævnet har derudover lagt afgørende vægt på, at klageren påbegyndte sin rejse i zone 02 og checkede ud i zone 01, hvor hendes rejsehjemmel blev kontrolleret, samt at det kan lægges til grund, at hun skulle til Lergravsparken st. i zone 01, hvor hendes bopæl er. Klageren har derfor isoleret set betalt korrekt pris for rejsen, nemlig for zonerne 01 og 02.

Ankenævnet har endvidere tillagt det vægt, at der ikke umiddelbart ses risiko for omgåelse, eftersom klageren påtog sig en risiko ved at checke ud, når rejsen skulle fortsættes, og dette i kontrolsituationen blev korrekt sanktioneret med en kontrolafgift på 750 kr.

Ankenævnet bemærker, at trafikvirksomhederne blandt andet i de tilfælde, hvor passageren efter check ud fortsætter rejsen ud over den pris, som er trukket på rejsekortet, kan fastholde kontrolafgiften på 750 kr.

Efter omstændighederne skal Metro Service ikke betale 10.000 kr. i sagsomkostninger til ankenævnet for tabt sag.

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 passagerer, der ikke på forlangende viser gyldig billet eller kort, herunder korrekt indchecket rejsekort, skal betale en kontrolafgift på 750 kr.

Kunder, som har checket korrekt ind ved rejsens begyndelse, men som ikke har checket rejsekortet ind ved skift af transportmiddel, – og/eller ved rejse i metroen ikke har checket ind på rejsekortstander tilhørende metroen rejser også uden gyldig rejsehjemmel. I denne situation udgør kontrolafgiften 10 DKK.

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører følgende:

“I have been using Rejsekortet for some six years, and I have been a dedicated public transportation rider. On 24/2, I received a fine for riding the metro for “lack of check in”. I believe I checked in, and I even enthusiastically offered my card to the officer, only to be surprised to receive a fine. Further, the officer could not see my check in from earlier on the journey – neither at Stefansgade, nor at Nørreport.

Over the years I have been used to checking out after each leg because in the early days it was easy to forget; and I did not want a fine for forgetting to check out. It is still my habit to check out, especially of buses (which I cannot just turn around and check out once off the bus). This is also because the system registers further check ins within 30 minutes as a continued journey.

As such, on 24/2 I was on a journey within Zones 1 and 2, riding from Stefansgade to Lergravsparken. I switched from the 5C bus to the metro at Nørreport (as I had done in reverse that same morning), and I checked in at Nørreport, at least I believe I did. Further, though I tried to show the officer that I had just been on the 5C, also in Zone 1, the system was delayed and would not display the ride.

My complaint is that I was in the middle of a ride and had already been charged within Zone 1 (which includes my home station, Lergravsparken). I tried to check in further at Nørreport, and this apparently did not register. I’ve attached just 10 short print outs of my journeys to give a sense of my consistent ridership, and also the example from the morning how I checked in and out of the metro, then in and out of the 5C when I had been in on my way to Nørrebrohallen.”

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 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 was met by a steward inspecting tickets on the 24th of February 2019 at app. 16:48 between Nørreport station and Lergravsparken station. The complainant presented her personal rejsekort, but it was not checked in and therefore a fare evasion ticket was issued to the complainant according to the travel regulations.

In her inquiry to the Appeals Board, the complainant has attached several prints from the self-service solution "Mit Rejsekort", as proof that she is a conscientious user of rejsekortet. Indeed, we can see that the complainant has several check-ins and check-outs over a very long time.

In the specific case, however, there is no doubt that the complainant checked out her rejsekort in the bus on February 24, 2019 at 16:36:57 and that there was no additional check-in on the card until the next day's morning. From Rejsekort A/S we have received a travel history and a detailed print of the check-out in bus 5c. See attached pdf-file.

The complainant states that the steward in the control situation could not see the complainant's latest check-in and check-out in the bus and that the steward also could not see the check-in which the complainant believed to have made at Nørreport station.

Rejsekort equipment in the buses, however, is not online, and therefore it can take to 24 hours before rejsekort-transactions are uploaded to the system, which is why the steward could not see that the complainant had checked out in the bus about 10 minutes before the ticket control. And that the steward also could not see a check-in from a card reader at Nørreport station was due to the fact that the complainant had not made a correct check-in.

Rejsekort A/S has previously conducted a comprehensive analysis of logging of more than 30 million transactions. The analysis has shown that all transactions carried out with the rejsekort are always registered in the underlying rejsekort system BackOffice. Since this is not the case here, a correct check-in have not been made.

This is an area of great potential for bypassing the passenger's obligation to arrange for his or her travel, if it is accepted that the rejsekort has been checked-in, even if this is not registered on the card or in the Back Office.

We must emphasize that we do not relate to the cause of missing/invalid tickets/cards, but only to facts. The fact in this case is that the complainant could not present a valid ticket when the steward checked the tickets and the fare evasion ticket was therefore correctly imposed.

Although we acknowledge that the complainant has paid for several other journeys by public transport, however, it is not relevant to the particular case, since one must have a ticket for each trip."

Til dette har klageren gjort gældende:

"In response to the transport company's comments on my complaint, I would like to hold steadfast that this

ticket was unfairly issued. Indeed, the company argues that the staff is trained in fare evasion; but there was no fare evasion here.

I cannot account for the technical limitations of the Rejsekort system's syncing on buses; but, as later proven, I checked into and paid for both for Zones 1 and 2. Having come from habits based in the former Klippekort system, I have been 'conscientious' particularly about ensuring that I do not leave a bus while still checked in (due to painful situations in the past); and rather, check in for my continuing journey at the transport form. I did not only attach the multitudinous Rejsekort transactions to show that I am a consistent and responsible rider, but also to demonstrate those ridership patterns.

Previously, as is still the case with other forms of tickets, my paid ticket (as can be seen in the records, no more than 10 minutes before the control was conducted) would be automatically valid for a period of time. I do not know the reason why my check-in did not work; however, I argue that this should be considered a matter of failure to check in properly on the continuation of my journey, as per the rejseregler: "Kunder, som ikke har checket rejsekort ind ved skift af transportmiddel, rejser også uden gyldig rejsehjemmel. I denne situation udgør kontrolafgiften 50 kr."

It was clear from the officer that he would not have issued a fare evasion ticket had I been able to show him my recent check-in from my bus journey. After all, it would have been obvious that I was not evading the fare. So on the one hand, when the system is unable to communicate my recent travel (be it by bus or otherwise), the company does not take responsibility and agree to withdraw the fine; but when I am unable to verify my recent check in with the technology available to me (as I receive no receipt of any kind when checking in, nor does my digital record from the bus ride appear online), I am issued a fine.

In addition to these comments, I would like to contribute to the growing request for a mobile receipt system for the metro, validating check-in. Beyond displays and noises, which work imperfectly for various reasons, there would then be an immediate, durable message for the customer. The manifold complaints stemming from check-in problems must represent *some* attempts at fare evasion, but *surely are not* fully accounted for in this way. Problems, both technical and human, happen, and this kind of receipt helps. In relation to this, in the recent past, customers have been issued a lower penalty when it was found to be their first time encountering a problem, as there was good faith. Where has this good faith gone?"

Hertil har indklagede svaret:

"The price difference for a single ticket and a Rejsekort trip is relatively large. This is because the Rejsekort is a highly discounted product, which, however, is also linked to different conditions. In the specific case, a

trip like the one the complainant has made is about half the cost on Rejsekort compared to the price of a ticket. When calculating the price of a trip with Rejsekort, the system takes into account both the number of zones and the travel time.

When checking out your Rejsekort, you have completed your journey unless you check in again a maximum of 30 minutes later in the same zone.

If you just want to switch from one type of transport to another eg from bus to train, you do not need to check out, but can just perform another check in (a so-called change-check-in) on eg the platform. If you forget to make a change-check-in, you will in principle travel without a valid ticket, but since you are checked in, a possible fare evasion ticket will be written down to DKK 50, -

However, the aforementioned write-down can only be considered if you have just forgotten the change-check-in, not if you have checked your card out. Although the complainant should have been in possession of a mobile receipt, which she requests, such a receipt would have merely shown that the complainant checked-out her rejsekort in bus 5C , but did not check -in again before she boarded the metro.

The complainant concludes her response with “ in the recent past, customers have been issued a lower penalty when it was found to be their first time encountering a problem, as there was good faith.” We do not know how the complainant reached that conclusion. At Metro, we treat all customers alike and the requirement for a valid ticket or card applies to everyone and we have never made decisions based on the term "Good or Evil Faith". It is simply impossible for us to relate to whether a customer has been in good faith or not, and we have not yet received an inquiry from a customer who states that he/she has been in evil faith.”

På ankenævnets vegne



Tine Vuust
Nævnensformand