

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer:	2019-0194
Klageren:	XX USA
Indklagede: CVR-nummer:	Metroselskabet I/S v/Metro Service A/S 21263834
Klagen vedrører:	Kontrolafgift på 750 kr. grundet forevisning af kvittering for et afvist billetkøb
Parternes krav:	Klageren ønsker, at ankenævnet annullerer kontrolafgiften og gør gældende, at der på automaten stod "approved", hvorfor de antog at kvitteringen var en billet Indklagede fastholder kontrolafgiften
Ankenævnets sammensætning:	Nævnensformand, landsdommer Tine Vuust Rasmus Markussen Torben Steenberg Asra Stinus Helle Berg Johansen

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

AFGØRELSE:

Metro Service er berettiget til at opretholde kravet om betaling af kontrolafgiften på 750 kr.

Beløbet skal betales til Metro Service, 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 fx på www.domstol.dk, www.advokatnoeglen.dk og /eller eget forsikringselskab om eventuel forsikringsretshjælp.

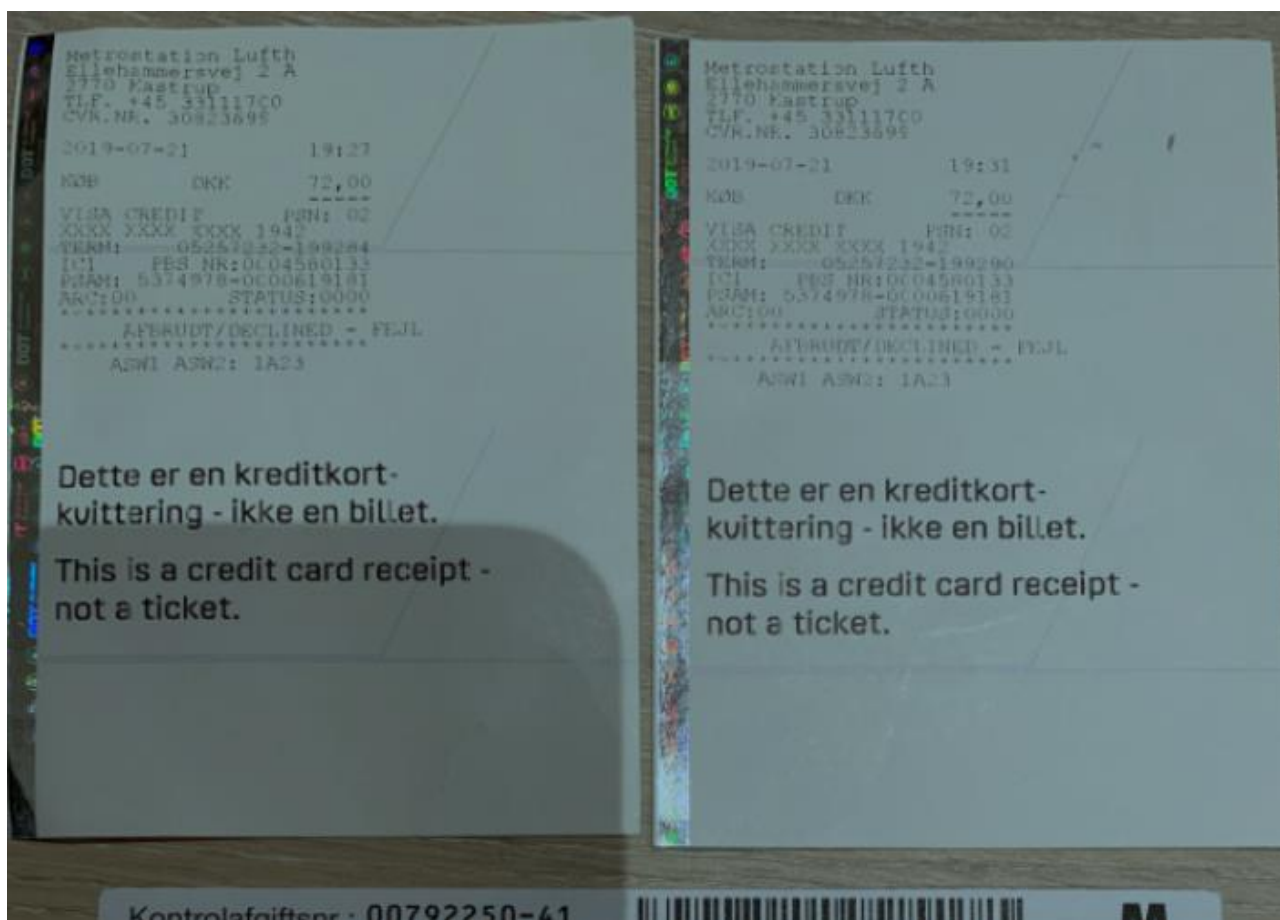
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SAGENS OMSTÆNDIGHEDER:

Klageren og en ven var på ferie i Danmark, og den 21. juli 2019 skulle de med metroen til Fields. Ifølge klageren forsøgte de flere gange at købe billetter i automaten og med to forskellige betalingskort, men uden held. En dansk herre kom og hjalp dem, og ved andet forsøg stod der "approved" på skærmen, hvorfor de antog, at papiret i automaten var billetter og steg om bord på metroen.

Ved kontrol i metroen blev klageren pålagt en kontrolafgift på 750 kr. for at forevise en kvittering for afvist køb.

I den efterfølgende klage indsendte klageren et foto af to kvitteringer udstedt med 4 minutters mellemrum, som begge var fejlede købsforsøg med det samme betalingskortnummer:



Metro Service fastholdt kontrolafgiften da det ikke kunne bekræftes, at der var fejl på automaten, og da kvitteringen var med engelsk tekst, hvor klageren kunne læse, at der var tale om en kvittering for et afvist køb "declined" og ikke en billet. Metro Service anførte videre, at der var to rejsende uden billet, men at de havde udvist venlighed og kun udstedt én kontrolafgift.

Under den efterfølgende ankenævns sag har Metro Service oplyst, at koden for det afviste køb dækker over "card did not respond", hvorfor det er klagerens kortudsteder, som ved hvad dette dækker over.

ANKENÆVNETS BEGRUNDELSE:

Klageren har indsendt to kvitteringer, som de medtog fra billetautomaten. Det fremgår af disse, at der er tale om det samme betalingskort, og at begge købsforsøg blev afvist, hvilket står med engelsk tekst "declined".

Metro Service har over for ankenævnet oplyst, at koden for det afviste køb dækker over "card did not respond", som er et forhold, der ligger hos kortudsteder, og som Metro Service ikke ved, hvad dækker over.

Det er ankenævnets opfattelse, at det tilstrækkeligt tydeligt fremgår af kvitteringerne på engelsk, at der ikke er tale om en billet, og at købet er blevet afvist.

Herefter blev kontrolafgiften pålagt med rette.

Det af klageren anførte om, at der ved det sidste køb stod "approved" på skærmen, kan ikke føre til et andet resultat, da passageren selv er ansvarlig for at sikre sig at være i besiddelse af gyldig rejsehjemmel inden påstigning på metroen.

Herefter finder ankenævnet, at der ikke har foreligget sådanne særlige omstændigheder, at kontrolafgiften skal frafaldes.

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 i lov om ændring af lov om trafikskaber og jernbaneloven, fremgår jernbanevirksomhedernes adgang til at opkræve kontrolafgift og ekspeditionsgebyr for passagerer, der ikke foreviser gyldig rejsehjemmel (billetter og kort).

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, som trafikvirksomhederne har vedtaget, præciseres hjemmelen til at udstede en kontrolafgift.

Det anføres således bl.a., at passagerer, 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. Det gælder også, hvis passageren har købt rejsehjemmel via en mobil enhed, der ikke kan kontrolleres, f.eks. hvis denne er løbet tør for strøm eller gået i stykker. Det er passagerens ansvar, at rejsehjemlen er endeligt modtaget på den mobile enhed før påstigning. Som passager

uden gyldig rejsehjemmel betragtes også passager, der benytter kort med begrænset tidsgyldighed (f.eks. pensionistkort) uden for kortets gyldighedstid, eller hvis andre rejsetidsbegrænsninger ikke overholdes (f.eks. for hvornår cykler må medtages). Passagerer, der rejser alene på andres rejsekort personligt eller med en anden kundetype, end passageren er berettiget til, rejser uden gyldig rejsehjemmel. Kortindehaveren skal altid selv være checket ind på kortet på de rejser, hvor et rejsekort personligt benyttes. Rejsekortet må endvidere ikke være så slidt/tildækket, at navnet ikke kan læses.

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører følgende:

“My friend and I were visiting Denmark for the first time and had 7days to stay. Before we had to leave, we wanted to experience a short Metro ride, so we decided to go to Fields and grab a bite.

We tried buying the metro tickets at Metrostation Lufth (2nd floor) on July 21st, but the machine kept saying transaction failed. We tried with 2 different credit cards. Finally, a Danish man came over and helped us and still failed but the 2nd time, the screen read "approved". We were all so excited and the man said "great, get your ticket" so we just grabbed the paper that came out not realizing that it said "This is a credit card receipt - not a ticket" since we weren't familiar with what the ticket looked like. On the way to the Fields, we got ticketed for fare evasion by Steward ID 06653. He said that it's his duty to issue a ticket for not having a valid ticket but that we could contact the customer service to explain what happened.

We certainly weren't trying to evade paying for the fare. We believe there was something wrong with the machine at the airport because when we tried to purchase the ticket on the way back from Fields, it worked right away with no problem.

We just wanted an experience riding the metro before we left Copenhagen, and this happens to us and we really regret that little adventure that we didn't even have to take... It really dampened my first trip to Europe.

If we really did something wrong intentionally, we would just pay the fee and forget about it, but we just don't think this is really fair. The fine amount seems too harsh for the honest mistake we made when we tried our best to pay for the tickets!

We understand that you have to deal with many stories and excuses, but we are not ticket evaders! We don't want to waste anyone's time, but we are really asking you to please reconsider as we appeal our case truthfully. Please, please reconsider this case and give a fare ruling. If we have to be responsible for not paying close attention to the ticket's fine print, we will, but we just can't agree with such a high fine amount. Maybe you can check the machine at the airport to see if there was an issue on that 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 and on Din Offentlige Transport -<https://dinoffentligetransport.dk/kundeservice/raad-og-regler/alle-rejseregler/> as well as

on our information boards which are placed at every station. The information boards contain travel information in both English and Danish.

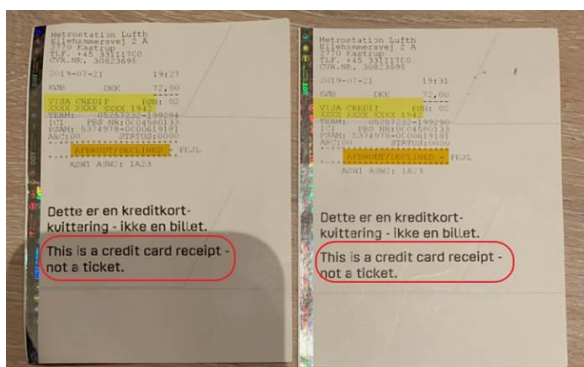
Our Metro staff is trained to issue fare evasion tickets to all customers without a valid ticket. They do not distinguish between an intentional or unintentional mistake. They only check the validity of the ticket. It is unfortunately not sufficient to enquire with a member of the public, regarding ticket 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 companion was met by a steward inspecting tickets on the 21st of July 2019 at app. 20:00 between Bella Center station and Ørestad station. The complainant and her companion presented a declined credit card receipt but no tickets. As no valid tickets could be presented, the steward issued a fare evasion ticket. In fact, the steward should have issued 2 fare evasion tickets - 1 to each of the travelers - but in the specific situation only one was issued.

The complainant states in her inquiries that she tried to buy tickets at the ticket machine at the airport and that she used two different credit cards, but that the transaction kept failing until she eventually got help from a passerby and that the ticket machine then approved the purchase and she simply took the paper from the machine without checking that she had gotten what she wanted.

The complainant, in her initial request to Customer Service, has attached a copy of the 2 rejected receipts – the one that was shown to the steward and one more from an attempt four minutes before, see photo below:



It is clearly stated on the receipts, in both Danish and English, that it is not a ticket. Both receipts show that the purchase attempt was declined (marked in orange) and lines marked in yellow indicate that both purchase attempts were made with the same Visa credit card. The error code ASW1 ASW2: 1A23 means "card did not respond".

If the complainant and her friend have had a look at the piece of paper coming out of the ticket machine, they would have immediately discovered that this piece of paper was also a receipt and not a ticket.

The metro station at the airport is a busy station with many foreign guests. For the same reason, the station is staffed around the clock with stewards in uniform, so you can always get help from a person if you do not use the yellow call points.

If the complainant and her friend had approached the Metro via the call point or the airport staff, they would have been assisted to buy tickets.

We have been in contact with the technical department which takes care of the ticket machines. No errors were reported for the ticket vending machines and there were no inquiries from other passengers on this occasion, which also corresponds to the error code stated on the complainant's receipts, namely "card did not respond". We do not know why "card did not respond" as it is the complainant's card provider who holds that information.

A fare evasion ticket is currently DKK 750 for adults, and is not graduated depending on the reason of the fare evasion ticket. The actual amount is decided by the cooperating transport companies and approved by the relevant authorities.

We would like to emphasize that in our case management we do not consider whether the missing ticket is due to a conscious or unconscious act and we do not accuse anyone of cheating. We only deal with the facts, and the facts of this case are that there were no errors on the ticket machine and if the complainant and her friend had checked the paper coming out of the machine, they would have discovered that they did not have a valid ticket and asked Metro staff for help instead."

På ankenævnets vegne



Tine Vuust
Nævnensformand