

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer: 2019-0235

Klageren: XX
England

Indklagede: Metroselskabet I/S v/Metro Service A/S
CVR-nummer: 31386569

Klagen vedrører: Kontrolafgift på 750 kr. grundet manglende billet

Parternes krav: Klageren ønsker, at ankenævnet annullerer kontrolafgiften og gør gældende, at hun havde opdateret DOT-appen med sit nye betalingskortnummer, men glemte at købe billet

Indklagede fastholder kontrolafgiften

Ankenævnets sammensætning: Nævnsformand, landsdommer Tine Vuust
Rasmus Markussen
Torben Steenberg
Asra Stinus
Helle Berg Johansen

Ankenævnet for Bus, Tog og Metro har på sit møde den 19. februar 2020 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 forsikringsselskab om eventuel forsikringsretshjælp.

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SAGENS OMSTÆNDIGHEDER:

Klageren bor i England, men er jævnligt i København. Den 20. august 2019 ankom hun fra Los Angeles i USA og overnattede i København, hvor hun rejste med Metroen den følgende dag.

Ifølge klageren har hun DOT-appen på sin telefon, som hun inden afrejsen opdaterede med sit nye betalingskortnummer. Men da hun ankom til stationen glemte hun grundet jet-lag og angst/ depression, som hun er medicineret for, at købe billet, inden hun steg om bord.

Ved en efterfølgende kontrol blev hun derfor pålagt en kontrolafgift på 750 kr., som hun klagede over til Metro Service og oplyste som ovenfor.

De fastholdt kontrolafgiften den 3. september 2019 med den begrundelse, at mobilbilletter skal være modtaget på telefonen inden ombordstigning og at de anførte grunde til at mangle billet, ikke kunne føre til et andet resultat.

ANKENÆVNETS BEGRUNDELSE:

Klageren kunne ved kontrollen ikke forevise gyldig rejsehjemmel, fordi hun havde glemt at købe en billet inden ombordstigning. Kontrolafgiften blev derfor pålagt med rette, og ankenævnet bemærker, at det er skiltet også på engelsk, at passageren skal have billet inden ombordstigning, idet det ellers kan koste en kontrolafgift på 750 kr. for voksne.

Det af klageren anførte om, at hun lige havde opdateret sit betalingskortnummer og derfor glemte at købe en billet også grundet sin angst/depression og jetlag, kan ikke føre til et andet resultat.

Ankenævnet bemærker, at det ikke er en betingelse for at pålægge en kontrolafgift at passageren bevidst har søgt at unddrage sig betaling for rejsen.

Herefter har der ikke 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 trafikselskaber og jernbane-loven, 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 rejsegeregler, 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.

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører følgende:

"On Wednesday the 21st of August while traveling on the Metro in Copenhagen I was issued a fine as I had not paid my fare, however I would like to appeal the decision of the issued fine. I am a frequent visitor to Copenhagen and have the app DOT on my phone, and have not once gone without paying my fare. On the morning of Wednesday the 21st my friend was dropping me off at the station and I was updating my card information on the DOT app, I have a text message from my bank to prove this, I had every intention to pay my fare. As I got to the station I somehow forgot to purchase my ticket on my phone, however I have valid reasons. I suffer from depression and I am on prescription medication given, and a side effect of the medication is memory loss and forgetfulness. I had also just flown in from LA the previous day and had been suffering from jet lag. I have gotten a response from the Metro Service department stating that "it is not possible for our stewards to take the intention and good faith of passengers into consideration" and "it is not possible for us to take special considerations". I understand fully why the fine was issued by the steward, however I have since explained my situation I believe it should be taken into consideration as it is a mental health issue and I do not believe this would be "special consideration"! It is a serious issue and one that effects my daily life. I will be happy to provide a doctors note if required."

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.

The fare evasion ticket in question was issued as the complainant forgot to buy a ticket before entering the train August 21st, 2019.

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/service/for-tourists/> and <https://www.rejsekort.dk/~media/rejsekort/pdf/flr/jointnationaltravelregulations.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.

On the information board at the station it is stated:



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 pensionist-kort 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.

Furthermore there are stickers at all platform screen doors in the metro where the customers are advised not to board without a valid ticket and the consequence if doing so:

Husk din billet

Husk din billet, inden du tager metroen

Sørg for at have modtaget din mobil billet, inden du stiger ombord

Hvis du rejser uden gyldig billet, vil du ved kontrol få en afgift på 750 kr

God tur

Remember your ticket

Please remember your ticket before entering the metro

Make sure you have received your mobile ticket before entering

Traveling without a valid ticket will lead to a DKK 750 fine

Enjoy your trip



Our inspectors makes spot check of the passengers and issues fare evasion tickets to all customers without a valid ticket. They do not distinguish between an intentional or unintentional mistake, or what might be the reason for lack of a valid ticket. They only check the validity of the ticket the customer presents.

We must point out that 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 ticket, which can be presented on demand.

The complainants comments that she suffered from jet lag as she had flown in from LA the previous day and that she use prescription medication due to her depression, and that this should be the reason for lack of a valid ticket, do not change our decision.

Based on the above and earlier correspondence we still find the fare evasion ticket correctly issued as the complainant could not show a valid ticket when asked for by the steward, which is why we maintain our claim of DKK 750,-."

På ankenævnets vegne

A handwritten signature in black ink, appearing to read "Tine Vuust".

Tine Vuust
Nævnsformand