

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2019-0245
- Klageren:** XX
Ærø
- Indklagede:** Metroselskabet I/S v/Metro Service A/S
CVR-nummer: 21298589
- Klagen vedrører:** Kontrolafgift på 750 kr. grundet manglende billet
- Parternes krav:** Klageren ønsker, at ankenævnet annullerer kontrolafgiften og gør gældende, at hun havde haft en anstrengende rejse og var i gang med at bestille billetten på telefonen, da Metroen ankom til perronen
- 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 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 forsikringssselskab om eventuel forsikringsretshjælp.

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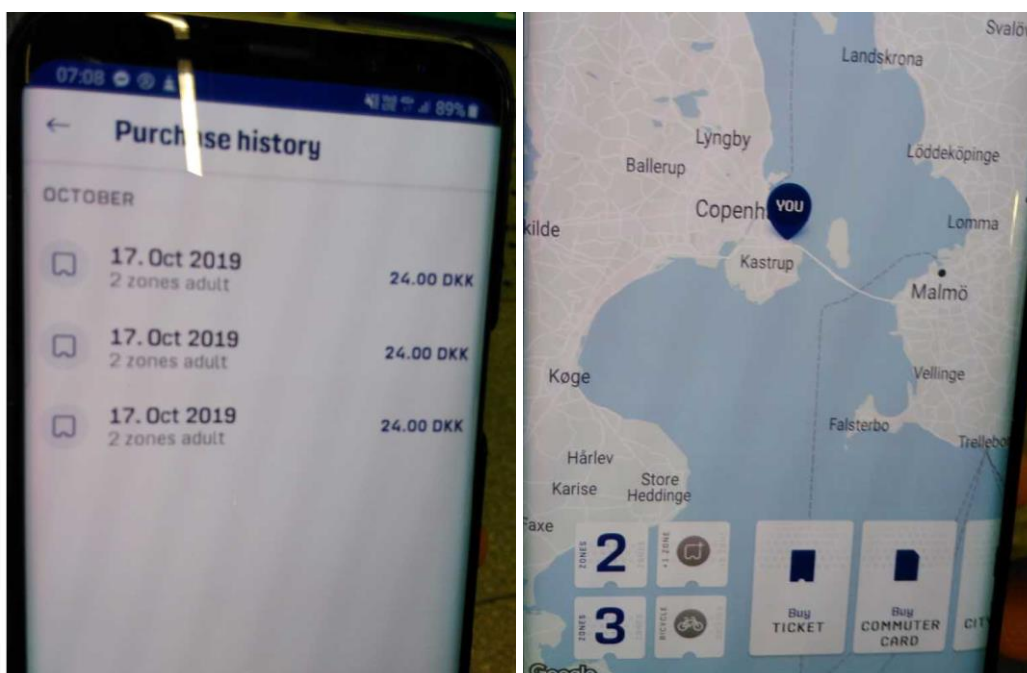
SAGENS OMSTÆNDIGHEDER:

Klageren bor på Ærø og er ikke vant til at rejse alene i København. Den 17. oktober 2019 skulle hun overnatte i København for at komme tidligt til lufthavnen den 18. oktober 2019.

Ifølge klageren havde hun ikke sovet godt på det hostel, hvor hun overnattede, og da hun ankom til Metrostationen, blev hun forvirret og begyndte at blive stresset igen, fordi hun ikke vidste, hvilken retning lufthavnen var i. Hun var begyndt at betale billetten på telefonen, da Metrotoget ankom, og hun sprang hurtigt om bord. Hun fik derfor ikke checket, om hun havde fået gennemført betalingen, fordi hun var nødt til at holde øje med skærmen, om hun rejste i den rigtige retning, og hun var også nødt til at sms'e med sin ægtefælle om det.

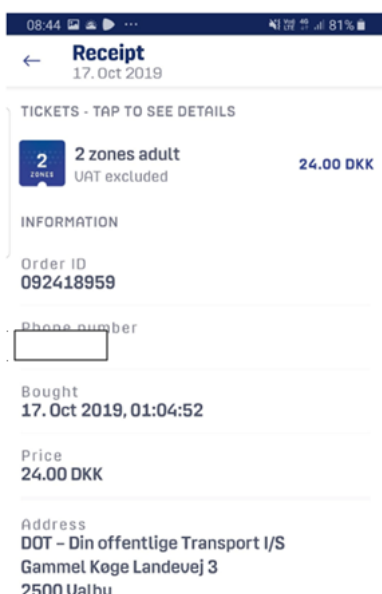
Pludselig stod stewarden foran hende, og da hun viste ham sin skærm, viste den, at hendes billetkøb ikke var registreret. Hun blev helt slået ud, og stewarden var mere striks end en politimand, hvorfor hun følte sig nedværdiget på grund af den måde, han talte til hende på. Det var ydmygende foran de andre passagerer, og da hun ankom til lufthavnen, fandt hun sig selv siddende på en bænk og græde over det, som var sket for hende.

Det fremgår af sagen, at der den 18. oktober 2019 kl. 06:57 blev udstedt en kontrolafgift til klageren på baggrund af udløbet mobilbillet. Stewarden tog følgende billeder fra klagerens telefon-skærm:



Ifølge udskrift fra Unwire købte klageren adskillige billetter den 17. oktober 2019:

Status	Handling	Beskrivelse	Link	Udført Af	Tidspunkt
Gennemført	Billet oprettet	Zonebillet (2 zoner)	Se detaljer	Kunden	17 Okt 2019 - 20:20:18
Gennemført	Billet oprettet	Zonebillet (2 zoner)	Se detaljer	Kunden	17 Okt 2019 - 20:04:35
Gennemført	Billet oprettet	Zonebillet (2 zoner)	Se detaljer	Kunden	17 Okt 2019 - 01:04:52
Gennemført	Billet oprettet	Zonebillet (2 zoner)	Se detaljer	Kunden	17 Okt 2019 - 01:01:32
Gennemført	Kunde oprettet			Kunden	17 Okt 2019 - 00:43:40



I den efterfølgende klage til Metro Service gjorde klageren gældende som ovenfor, og at det ikke havde været hendes hensigt ikke at betale for rejsen, men at man kunne se, at hun havde været forvirret også den foregående dag over billetkøbet, fordi hun havde købt billet både kl. 20:04 og kl. 20:20.

Den 21. oktober 2019 fastholdt Metro Service kontrolafgiften og oplyste, at det ikke var muligt at købe billetter på forhånd, at det var passagerens ansvar at sikre sig, at billetten var modtaget på telefonen inden ombordstigning, og at der var skiltning på engelsk om ikke at stige om bord uden gyldig billet.

ANKENÆVNETS BEGRUNDELSE:

Klageren kunne ved kontrollen i Metroen den 18. oktober 2019 kl. 06:57 ikke vise nogen gyldig billet, da hun ikke havde fået gennemført den billetbestilling, som hun havde påbegyndt, inden Metroen ankom til perronen.

Klageren købte en billet den 17. oktober 2019 kl. 01:04 til 2 zoner, og en sådan billet er kun gyldig i 1 time og 15 minutter. Billetten kunne derfor ikke benyttes som rejsehjemmel næste morgen.

Herefter blev kontrolafgiften for udløbet mobilbillet pålagt med rette.

Det er ikke en betingelse for at pålægge en kontrolafgift, at passageren bevidst har søgt at unddrage sig at betale for rejsen.

Da dette er et område med oplagt mulighed for omgåelse af reglerne om at kunne forevise gyldig billet, hvis det accepteres, at en udløbet billet er gyldig rejsehjemmel, finder ankenævnet, at der ikke har foreligget sådanne særlige omstændigheder, at kontrolafgiften skal frafaldes.

For så vidt angår klagerens oplevelse af stewardens adfærd, har ankenævnet ikke fundet grundlag for kritik.

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.

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører følgende:

"I decided to file a complaint about my fine and please hear me out and take time to read my story. I'm living on Ærø and I very seldom travel to Copenhagen. On Ærø we have a free bus and when going with the ferry we buy a return ticket when coming back to the island and not when departing (No expiry date & time limit). So, I am used to with the simple life and system here and this is my first time travelling alone to a big city.

Weeks before, my husband booked my overnight accommodation and DBS train ticket for a cheap price and I wrote Danhostel a day before my flight to Helsinki to inquire about the easiest and safest way and they said that the METRO train station is 5mins walk from Danhostel (please see attached the email). On October 17, I had to go to my Language school first and I missed the ferry 15:35 (75mins going to Svendborg) and so my DBS ticket from Svendborg 17:02 to Copenhagen was not usable (Pls see attached my ticket). While waiting for the next ferry, I had to book a new train ticket again last minute that cost me 300+ kroner. Earlier that day, my husband downloaded your app (DOT) to my smartphone and booked the metro ticket for me in advance 1:04am. So, when I arrived in Copenhagen 20:08 I decided to take the

METRO for the first time in my life and accidentally booked 2 times 20:04 and 20:20 (I did not know that there is a time limit). I kept looking and walking for many times and keep texting my husband where to find the M Station (Pls see our conversations). He didn't know also, but tried to guide me via Google Maps. When I found it, it was near the Politi office, I did not notice the M logo because its faded and only in RED color the arrow down sign. (Pls see the pictures). When I reached your station, I was confused again and took the wrong station (going to Airport) and hurried back to the right station (going to Bella). Another stressful thing was to find the Danhostel because it was dark and there were many ongoing constructions on the way. So, it took me ca. 15mins to walk. In Danhostel, I was so exhausted and hungry and I had a roommate in a dorm so I was shy to use the alarm for waking up in the morning. I couldn't sleep much because I was afraid that I would miss the flight (9AM flight) and I had to be in the airport around 7am (at least 2 hrs in advance, right?). Next morning around 6:20am it was still raining and I had to walk going to the Metro station. That time it was also dark and I had to use the stairs with my heavy bag and luggage. And when I was on top, I was confused and started to get stressed again not knowing which way going to the airport. I started to pay my ticket when the train was coming and I hurriedly jumped in (maybe there is a CCTV so you can check on Bella Station?).

I rushed coming inside and did not notice or check if I successfully paid my ticket because, I kept looking at the screen to check if it's was the right way to the airport and I also texted my husband asking if I was on the right way. Then, here you go...the ticket inspector was coming and I showed my smartphone (thinking I already paid) and it showed I did not register my ticket. I got knocked out and felt nervous because the inspector was more strict than a policeman and I felt like he pushed me down with his attitude. I felt so humiliated because people were looking negative at me. I couldn't think much why this shit happened to me. When I reached the airport and I was roaming around to find the gate I found myself sitting, crying and recalling what happened that morning.

I am requesting for reconsideration of my appeal, since it was my first time using your app, first time in METRO, first time travelling alone and first time with the time limit ticket. But I admit my ignorance if you call me that since I bought 2 extra tickets which you can see in the history (Pls see attached). I am so stressful and couldn't think right with the "transfer thing" like in DBS because it was another kind in METRO (more faster). I am used to with the island with a stress free life. I can't concentrate in school and on my job since I came back because I keep recalling the ticket inspector and how he treated me and how I stupidly stressed out had a lot of trouble, but I was not trying to cheat. I cannot handle to travel alone in a big city and emotionally, it was too much stress for me especially paying 750kr is too much. I can buy our food for a week of that amount and I have too many expenses and I can't handle it. Can you please reconsider my appeal?

Please see attached all the documents and I am telling you the truth and seek for forgiveness and I will keep in mind and obey your rule in the future and always think twice."

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 could not present a valid ticket upon inspection October 18th, 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 stations 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 pensionistkort 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 boarder without a valid ticket and the consequence if doing so:



The complainant refers to her starting to pay her ticket when the train came and she therefore hurriedly jumped in, which she writes that we can see if we watch the CCTV. We can inform that we have no admission to the video footage from the stations. The video are available for the police in criminal cases and cannot be used in our processing cases.

We understand that the complainant have had a very unlucky experience going to Copenhagen, but this do not change the fact, that it always is the passengers responsibility to secure a valid ticket which can be present upon request from the inspector. As we want to treat all passengers equally, we do not take into consideration whether a lack of a valid ticket is due to a conscious or unconscious act.

The complainant writes that the inspector was more strict than a policeman and that she felt like he pushed her down with his attitude. If that have been the case we of course apologize, but also notes that the complainant did not comment on this fact in her first inquiry.

Our employees are instructed and trained to give our customers the best and most professional service and we are therefore sorry to read that this was not the complainants experience, but at the same time we must also inform that our employees are instructed to give a fare evasion ticket to passengers who cannot present a valid ticket, regardless the reason.

Based on the above and the fact that the complainant went on the train without a valid ticket – she herself wrote ***“I rushed coming inside and did not notice or check if I successfully paid my ticket”*** and admit that she had no valid ticket when boarding – we find the fare evasion ticket correctly issued and maintain our claim of DKK 750,-.”

Hertil har klageren svaret:

“First and foremost, my appeal is seeking for reconsideration, since it’s my first time in Metro and that kind of big city. Reconsideration for the stressful feeling I had during my first time trip alone, reconsideration of unexpected bad experience once I step out my foot away from home. Start from Ærø ferry, DSB train, looking for your METRO sign (please update your signage color) in Central train station, wrong way , going &

looking for the hotel at night, not enough sleep, worried that I might be late with my flight, rainy morning and walk back to the Metro station and your ticketing officer's treatment, I did not enjoy my meeting with my friend and did not concentrate with my work and school because of that ticket. Reconsideration since I pay 2x without using it.

I cannot accept the fact what they wrote:

1. I wrote **"I rushed coming inside and did not notice or check if I successfully paid my ticket". It says that "I admit that I had no valid ticket when boarding"**. Literally, "I did not admit" that I had no valid ticket when boarding. I am just telling the scenario on this part because a day before, I had my experience on the night of 17th October, I pay 2x because, I did not notice or check if I successfully paid my first ticket (20:04) then I pay again the 2nd time (20:20) and I just notice that time is still running on my first payment but it is too late for me to know.

2. If possible for them to check the CCTV because on that CCTV, I am in front of the platform, using the app and started to pay my ticket when the train is coming that is why I rushed coming in. I did not notice nor bother to check (again) because, I am afraid that I took the wrong way (again) to the airport. If they read my chat conversation

3. **" The complainant writes that the inspector was more strict than a policeman and that she felt like he pushed her down with his attitude. If that have been the case we of course apologize, but also note that the complainant did not comment on this fact in her first inquiry."** Yes, sorry I forgot to mention at first, but it doesn't change the fact that it was his attitude and the way he approached me.

Yes, I admit! I admit my ignorance. I admit that we don't have that hi-tech system back home (app & timer ticket) I admit for not observing and reading around Metro (focus only my destination), I admit for being stressful and worried alone. I am just being honest and that is why, I am requesting for reconsideration.

You cannot reconsider as proof that I also pay 2 more extra tickets on that day?

I wish you can show some empathy and not being a cold institution."

Hertil har Metro Service anført:

"As to the first point, we only referred to what the complainant herself wrote.

As mentioned in our first reply, we have no admission to the video footage from the stations. The video are available for the police in criminal cases and cannot be used in our processing cases.

As part of the education of our controllers the staff are trained in both conflict management and customer service among others and we must again apologize if it was the complainants experience that the controller was not professional.

In the meantime the above do not change the fact, that the complainant did not – before entering the metro - have a valid ticket which could be presented upon inspection, and therefore we find the fare evasion ticket correctly issued."

På ankenævnets vegne

Tine Vuust
Nævnensformand