

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer: 2019-0261

Klageren: XX
Polen

Indklagede: Metroselskabet I/S v/Metro Service A/S
CVRnummer: 21263834

Klagen vedrører: Kontrolafgift på 750 kr. grundet manglende registrering af check ind på rejsekort

Parternes krav: Klageren ønsker, at ankenævnet annullerer kontrolafgiften, da hun hørte lyden for korrekt check ind, men havde travlt og læste ikke teksten på standen
Indklagede fastholder kontrolafgiften, da check ind ikke er registreret på kortet eller i back office

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 klagerens betaling af kontrolafgiften på 750 kr.

Klageren skal betale beløbet 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.

SAGENS OMSTÆNDIGHEDER:

Den 9. november 2019 skulle klageren, som er en polsk studerende i København, rejse med Metroen fra Nørreport st. Ifølge klageren havde hun travlt, men inden hun steg om bord på Metroen, holdt hun rejsekortet hen til standen og var sikker på, at hun hørte lyden for korrekt check ind. Klageren har oplyst, at hun ikke er vant til at læse skærmens tekst og heller ikke gjorde det denne dag.

Ved en efterfølgende kontrol af klagerens rejsekort kl. 07:18, var dette ikke registreret checket ind, og hun blev derfor pålagt en kontrolafgift på 750 kr.

Klageren anmodede derpå Metro Service om at frafalde kontrolafgiften, da hun havde checket ind, og der måtte være en fejl ved systemet.

Metro Service fastholdt kontrolafgiften, da check ind ikke var registreret i Back Office den 9. november 2019, og at den seneste registrering var et check ud den 7. november 2019:

<input type="checkbox"/>	02-11-2019 06:03:42	02-11-2019 06:15:06	01-11-2019	Tank-op	Tank-op
<input type="checkbox"/>	02-11-2019 06:08:12	02-11-2019 06:17:45	01-11-2019	Check ind	Check ind
<input type="checkbox"/>	02-11-2019 06:33:33	02-11-2019 07:06:51	01-11-2019	Check ud	Check ud
<input type="checkbox"/>	07-11-2019 08:02:44	07-11-2019 08:18:17	01-11-2019	Check ind	Check ind
<input type="checkbox"/>	07-11-2019 08:21:51	07-11-2019 08:32:42	01-11-2019	Check ud	Check ud
<input type="checkbox"/>	09-11-2019 07:18:19	09-11-2019 07:38:30	01-11-2019	Kontrolmærke	Kontrol
<input type="checkbox"/>	09-11-2019 07:18:23	09-11-2019 07:38:30	01-11-2019	Kontrolmærke	Kontrol
<input type="checkbox"/>	09-11-2019 08:04:58	09-11-2019 08:21:49	01-11-2019	Check ind	Check ind
<input type="checkbox"/>	09-11-2019 08:25:12	09-11-2019 08:36:25	01-11-2019	Check ud	Check ud

ANKENÆVNETS BEGRUNDELSE:

Ankenævnet har tidligere til baggrund anmodet Rejsekort A/S om at få nærmere oplysninger om procesforløbet/transaktionen mellem standen og rejsekort, når kortet føres forbi standen, 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 standen, 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 forsøg 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 kan forekomme transaktioner på klagerens rejsekort, herunder forsøg på check-ind, 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.

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.

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.

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

Dette 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.

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 indcheckt rejsekort, skal betale en kontrolafgift på 750 kr.

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører følgende:

“On 9th of November around 7:00 a.m. I entered Norreport metro station. Before entering the train I placed my Rejsekort on "check in" and quickly got on the metro. After Femøren station ticket inspector approached me to check my card. It turned out that it was not checked in by system so I got 750 DKK ticket/fine. I am not used to checking what shows up on small screen but to sound. I was in rush to train that was about to leave and I was sure I heard it.

I do not use public transportation really often as I usually use bike to move in Copenhagen. I asked to check cameras on the Norreport station in order to check that all I did was correct and my card should have been read and I did not mean to travel without paying. Nowadays, when we are all surrounded by systems instead of people (in this case, card check in) - we have to act only according to system's algorithm - only one solution. People are not robots, not systems, we are imperfect. And do we have to be punished because of that? In my case I did not mean to travel without ticket, I was in a rush and did not pay enough attention to "check in text". But who is not in the rush while catching the train/bus, especially to the airport? While talking with other people, I also hear about similar cases/opinions. Because in "it's eyes" we are all the same. And if we do not act as it's wants us to act, we get punished, even if we did not mean to do any bad. I really miss the old days, where it was people for people, not people producing systems that give them more money but more problems to customers. I am a Polish student at KEA and it is a really big expense for me. I would need to borrow money to pay. I would really appreciate if you could revise my case in order to cancel it or reduce. Kindly please consider I was not intended to use the transportation without paying. Please see my student's card attached. I am embittered with this case and would like to learn the final viewpoint of institution representing Danish system. I do not want to believe that the system is supposed to be „boolean” and not considering human intentions and circumstances when committing delinquency. If it was meant to be like that, people confronted with electronic devices would be treated as robots; or even worse as robots are equipped to correspond with other devices, unlike people. I own a valid Rejsekort and always scan it while entering and leaving any means of transportation. While scanning I pay attention to the confirming sound. Also before that unlucky journey I was sure to hear the confirming sound. It is very important for me that my truthfulness is verified, i.e. that I for sure put the card to the reader correctly. I do not want to be perceived in one line with these who are cheating. It is not true, as Metro Service writes, that I am not sure if I „checked in” correctly. I am sure that I placed my card correctly and I was sure that I enter the metro train against payment. I asked this fact to be confirmed through cameras on the station. What interested me in the latter from Metro Service, is the information about „comprehensive analysis”. According to Metro Service, the analysis showed that „all transactions carried out with the rejsekort are always registered in the underlying rejsekort system BackOffice”. From the experience of my case it shows that this analysis could have not covered people as me, namely who placed their cards on the terminal, but were not registered; and for sure not all of them had to meet the ticket controller afterwards. Metro Service provides that „it is not possible to determine who complains expresses “intentionally cheating” and who does not. We relate exclusively to the facts.”. And further Metro Service specifies that in my case it is the fact that I travelled without the valid ticket. It is for me an unacceptable mental shortcut. I was travelling without paying for the ride because the system did not charge me while I behaved according to system's requirements, meaning I placed my

card on the reader. This is an essential and most important fact that I did put the card on the terminal – as it can be checked with cameras. So indeed Metro Service is not taking into account all of the facts. I am a student at KEA – Architectural Technology and Construction Management. After graduating I want to take part in public building/spaces projects and support creating their friendly environment. By friendly I recognise places where fair people will not be treated unfair. So that is why my case is really weighty for me to be clarified also from this point of view. I would like to know whether the country accepts that a human can be punished because the system controlling his/her behaviour is not good enough. I come from Poland and the amount of DKK 750,00 represents a really large amount of money for me. Considering that this has never happened to me before, I kindly ask for this fine to be cancelled.”

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 travel document on demand to the ticket inspectors.

In cases where passengers are not able to present a valid travel document, 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 travel document. They do not distinguish between an intentional or unintentional mistake. They only check the validity of the travel document. 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 9th of November 2019 at app. 07:20 between Femøren station and Lufthavnen station. The complainant presented her personal rejsekort, but it was not checked in. As the complainant did not have any valid travel document, a fare evasion ticket was issued to the complainant according to the travel regulations.

When you obtain a rejsekort you agree to the terms and conditions for the card. When using your rejsekort, you must check for yourself that the card is properly checked in, by reading, among other things, if it says "OK. Have a nice Journey" on the card reader's display.

In "Terms and conditions for Rejsekort" which can be read in full (in English) on this link https://www.rejsekort.dk/Det-Med-Smaat?sc_lang=en#privat you can read, among other things:

1.3 How to use a rejsekort

A rejsekort (including one with a Season Pass product) must be checked in at the start of your journey and whenever you change between different means of transport. You must also check out at the end of your journey. You must check in during your journey when you change between different means of transport because a change may influence the fare (different routes are priced at different rates). For return trips (same distance from A to B and return), you must check in at A and check out at B, and on return journey, you must check in at B and check out at A. For more information about objections to fare calculations, see Section 5.3. The actual cost of the journey is deducted from the rejsekort used when the journey is completed with a check out.

If you fail to check out, the prepayment charged when you checked in is withheld. Further charges may be made as payment for the journey for which the rejsekort was used. A fee may also be charged, see Section 1.5. If you fail to check out, your rejsekort may be blocked, see Section 4.

Failure to check in (either at the start of or during your journey) means that the card bearer travels without a legally valid travel document and an inspection fee may therefore be levied. If you fail to check out, the system cannot calculate the correct cost of the journey.

To check in and check out, hold the rejsekort onto "The Blue Point" of a card reader. Card readers are marked either "ind" (Check in) or "ud" (Check out). When you check in or out on a bus, you use a card reader on the bus. In some buses, both check in and check out must be done at the driver. **When you travel by train, metro or light rail, you must check in and out on card readers located on the station/platform. The card bearer is liable to ensure that both check in and check out are correct.**

If the card bearer forgets to check out or is prevented from doing so, he/she can - under certain conditions - check out via the "Check Udvej" app or via the Rejsekort website in accordance with the terms and conditions for this service. Use the app or check out online at <https://rejsekort.dk/checkudvej>.

The regulations governing the use of your rejsekort are listed in the joint national travel regulations at www.rejsekort.dk. You can also learn more about the different types of rejsekort, how to use your rejsekort, regulations for rejsekort settings (i.e. you can set your card to meet varying travel needs) and a detailed description of how to check in and check out, etc. at www.rejsekort.dk.

In The Joint National Travel Regulations, you can read the following about travels by Rejsekort.

2.4.2. Use of rejsekort

Rejsekort issued by Rejsekort A/S can be used as a travel document, except on Bornholm.

Rejsekort must be checked in before the start of the journey. Rejsekort must also be checked in at every transfer from one bus, train or metro to another and checked out at the end of the journey. **It is the customer's responsibility to ensure that the rejsekort is correctly set to the customer(s) travelling on the card.** For travel on the metro, check in (also when changing from train and bus) shall be made at rejsekort stands belonging to the metro.

Definition of a journey:

A customer who travels from A to B must check in at A and must check out at B

A customer travelling with a Commuter Pass does not need to either check in or out on a train, metro or Letbane light rail service in Aarhus.

The complainant writes in her application to the Appeals Board that she is partly not used to look at the card reader when checking in and that she does not use public transport as often because she uses a bicycle to get around.

The complainant has also explained that she did not paid attention to whether she was properly checked in because she was in a rush.

From Rejsekort A/S we have received travel history from the complainant's card (attached as pdf file). The card was purchased on March 29 this year and although the complainant does not use the card every single day, 46 trips have been completed. From the history you can also see that the complainant's card was not checked in at the specific time.

At Nørreport station, Metro has 12 regular check-in card readers in addition to a number of group check-in card readers and Rejsekort vending machines.

We checked if the technical equipment was working at that day and time, and it did; in the period between 07:00 and 08:00, 168 check-ins have been made on the regular card readers.

When the complainant was to return from the airport a little later in the morning towards Nørreport, she checked into the card reader at the airport, which is why we can conclude that the card is also not flawed.

As the complainant was not aware if she checked in correctly herself, she has instead asked us to review the video surveillance at Nørreport station.

But video recordings on stations and trains do not aim to confirm whether passengers are checking in or similar. The video surveillance is for security reasons and first and foremost captures complete images of stations, platforms, trains, etc. In addition, we cannot access the content of the recordings ourselves; this can only be done by the relevant authorities, for example, the Police and then only in cases where the material is deemed to be of police interest.

The metro runs around the clock and there are never many minutes between trains. Although we can understand that you can be in a hurry, we do not, however, think that busyness is an excuse for not ensuring that you have a valid travel document before boarding the train.

We have no comments on the complainant's considerations of the old days where she was given personal service.

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.

The actual amount for a fare evasion ticket for an adult amounts to DKK 750. The amount is set in collaboration between the transport companies and the relevant authorities and is not graduated in relation to the reason for the lack of a valid travel permit. By its nature, it is not possible to determine who complains expresses "intentionally cheating" and who does not. We relate exclusively to the facts, and the facts of the specific case are that the complainant did not have a valid travel document, and therefore we maintain our demand for payment of the fare evasion ticket XXX DKK 750.

As the complainant states that the amount is a large expense for her, we would like to draw attention to the possibility of dividing the payment over 3 months against a handling fee of DKK 25 per. month.”

På ankenævnets vegne



Tine Vuust
Nævnshoved