

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer: 2020-0059

Klageren: XX
8200 Århus N

Indklagede: Metroselskabet I/S v/Metro Service A/S
CVR-nummer: 21 26 38 34

Klagen vedrører: Kontrolafgift på 750 kr. grundet rejse uden billet

Parternes krav: Klageren ønsker, at ankenævnet annullerer kontrolafgiften, og gør gældende, at han havde mistet sin pung

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 23. juni 2020 truffet følgende

AFGØRELSE:

Metroselskabet I/S v/Metro Service A/S er berettiget til at opretholde kravet om betaling af kontrolafgiften på 750 kr.

Beløbet skal betales til Metroselskabet I/S v/Metro Service A/S, 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:

Klageren rejste den 5. februar 2020 med Metroen fra Københavns Lufthavn st. til Kongens Nytorv st., da der efter Kastrup st. var kontrol af hans rejsehjemmel. Da klageren ikke kunne forevise en gyldig billet, blev han kl. 11:02 pålagt en kontrolafgift på 750 kr. for manglende rejsehjemmel.

Klageren anmodede den 11. februar 2020 Metro Service om at frafalde kontrolafgiften og begrundede dette med, at han samme morgen, hvor han var rejst med bus fra Århus til Københavns Lufthavn, enten havde glemt sin pung derhjemme eller havde mistet den på rejsen. Han anførte, at han havde forsøgt at købe billet ved at anvende mobile pay i DOT-appen, hvilket imidlertid ikke havde kunnet lade sig gøre, og han havde også forsøgt at få hjælp fra andre rejsende, hvilket heller ikke var lykkedes. Han besluttede herefter at stige på Metroen uden billet i håb om kontrollørens forståelse ved en eventuel kontrol.

Metro Service fastholdt kontrolafgiften den 14. februar 2020 med henvisning til selvbetjeningsprincippet og anførte, at uanset klagerens uheldige situation var det ikke muligt at inddrage hans gode intentioner i bedømmelse af, om kontrolafgiften var berettiget.

ANKENÆVNETS BEGRUNDELSE:

Ved kontrollen i metroen den 5. februar 2020 kunne klageren ikke forevise gyldig rejsehjemmel, fordi han ikke havde købt billet.

Kontrolafgiften på 750 kr. blev dermed pålagt med rette.

Ankenævnet bemærker, at klageren steg på Metroen på Lufthavnen st., hvor der fandtes mulighed for at søge vejledning såvel i det betjente billetsalg i Lufthavnens ankomsthale som hos en af Metroens stewarder, der som regel befinder sig på Metrostationsområdet, når han havde mistet sin pung og ikke lykkedes med at købe en mobilbillet via DOT-appen.

Pligten til at betale kontrolafgift er ikke betinget af, om passageren bevidst har forsøgt at unddrage sig betaling for rejsen, og da dette er et område med mulighed for omgåelse af reglerne om at betale for sin rejse, er det ankenævnets opfattelse, at der ikke har foreligget sådanne særlige omstændigheder, at klageren skal fritages for kontrolafgiften.

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 28. september 2010, fastsætter jernbanevirksomheden bestemmelser om kontrolafgift i forretningsbetingelserne.

I de fælles landsdækkende rejseregler, som trafikvirksomhederne har vedtaget, præciseres hjemmelen til udstedelse af 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 February 5th, I had left home early to take a bus from Aarhus to Copenhagen Airport to pick up a friend of mine from the airport and when I arrived in the airport I realized that I did not have my wallet on me, at the time I did not know whether my wallet was stolen or I left it at home since I had to wake up and leave home too early. By the time I went to the airport my friend texted me saying that she already took the metro to the city center. So I started looking around to see whether I dropped my wallet around. Then I remembered that I have mobilepay application on my cellphone and tried to buy a ticket using vending machine, however it was not possible to pay with mobile pay in the vending machine. Later I have asked a few people whether they would be able to help me by buying a ticket and I would pay them back via mobilepay, however people did not want to help. I then downloaded the DOT application to my cellphone thinking that I would maybe be able to pay it through application via mobilepay however it was not possible to to pay with that application either. I was already too frustrated and my friend had been waiting for me in the city centre so I thought I had to take the metro anyway and if ticket controller comes up I would explain my situation. Well, when I explained my situation to the ticket controller he told me he has to write a fine ticket anyway and I should make a complaint about it later. When I made my complaint, my complaint was rejected saying that I could have called the emergency line and contact the tower at the station. I did not even know such a line existed and even If I knew, I would never think it is for my situation since I believe such lines are for technical issues. I live in Aarhus and I always use my rejsekort for my trips in Copenhagen. I use public transportation everyday in Aarhus and never ever had a fine ticket. The reason I am making a further complaint to you is because it was really sad to see my complaint rejected with such an explanation. In fact, I was hoping to that KBH Metro would understand my situation and take this as a constructive feedback regarding the DOT application since unlike the Middtrafik app it does not allow for payment via mobilepay. I do not believe I got a fair treatment."

Indklagede anfører følgende:

" On February 5th 2020, at app. 11:02 between Kastrup station and Kongens Nytorv station, the complainant received a fare evasion ticket because he could not present any kind of ticket or card.

The complainant explains that he lives in Aarhus, that he always uses his travel card in both Aarhus and Copenhagen, that he had no intention of not paying but that he could not find his wallet. The complainant also explains that he thought he could use Mobile Pay in the ticket machine and in the DOT app as well as that he was trying to get other passengers to buy a ticket for him.

Initially, it can be stated that the Metro - like the other public transport means in the Capital Region - is a self-service system, where the passenger is responsible for being in possession of a valid travel document 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 a valid travel document cannot be presented on demand, it must be accepted that you must pay a fare evasion ticket of DKK 750 for an adult. This basic rule is a prerequisite for the self-service system that applies to travel by public transport in the Capital Region. This is stated partly on the information boards set up at all metro stations and partly in the common travel rules for DSB, Metro and Movia, which

are available on our website www.m.dk and on DOT's website https://www.rejekort.dk/-/media/dms/JointNationalTravelRegulations.ashx?_ga=2.265486157.335746394.1583483940-1364825765.1565002849.

The complainant started his metro journey at the Airport station after allegedly arriving at the airport from Aarhus by bus. That means that the complainant has passed DSB's long line of ticket machines in Terminal 3 and the associated uniformed personnel on his way up to the metro station.

Since the Airport station is a place with many tourists, the metro part of the station is also staffed with uniformed personnel 24 hours a day, and we wonder a little why the complainant has asked strangers to buy a ticket for him instead of approaching the uniformed staff.

We have been in contact with the back office for the DOT app, which confirms that the complainant's mobile number has tried to place an order but that payment has not been confirmed through DIBS. But if the complainant has tried to pay in the app with Mobile Pay instead of a debit card, then that is the explanation that the purchase attempts could not be completed.

If the complainant had contacted either Metro's or DSB's staff then they would have been able to inform him he could have purchased a ticket via the DSB app and used Mobile Pay.

The fare evasion ticket has been issued correctly in accordance with current regulations. And since we are of the opinion that there have been plenty of opportunities to get help purchasing a ticket before boarding, we maintain our demand for payment of tax XX at DKK 750, -
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På ankenævnets vegne

A handwritten signature in black ink, appearing to read 'Tine Vuust', written in a cursive style.

Tine Vuust
Nævnensformand