

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer:	2020-0151
Klageren:	XX 2300 Kbh. S
Indklagede: CVRnummer:	Metroselskabet I/S v/Metro Service A/S 21263834
Klagen vedrører:	Kontrolafgift på 750 kr. grundet manglende registrering af check ind på rejsekort
Parternes krav:	Klageren ønsker, at ankenævnet annullerer kontrolafgiften, og gør gældende, at hun hørte lyden for korrekt check ind Indklagede fastholder kontrolafgiften
Ankenævnets sammensætning:	Nævnensformand, landsdommer Tine Vuust Rasmus Markussen Torben Steenberg Susanne Beyer Svendsen Helle Berg Johansen

Ankenævnet for Bus, Tog og Metro har på sit møde den 28. oktober 2020 truffet følgende

AFGØRELSE:

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

Klageren har betalt kontrolafgiften allerede.

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 har et rejsekort, som hun skulle anvende den 30. juli 2020 til en rejse med metroen fra Kongens Nytorv st. Ifølge klageren checkede hun kortet ind, som hun plejer og både hun og vennen hørte lyden for korrekt check ind. Hun havde anvendt kortet tidligere samme dag uden problemer, hvor hun havde checket ud kl. 10:06 på Kongens Nytorv.

Ved kontrol efter Gammel Strand st. var rejsekortet imidlertid ikke checket ind, og klageren blev pålagt en kontrolafgift på 750 kr. kl. 10:50.

Klageren anmodede Metro Service om at annullere klagen og gjorde gældende som anført ovenfor, og at vennen kunne bevidne dette skriftligt.

Metro Service fastholdt kontrolafgiften med henvisning til, at passageren også skal kigge på kortlæserens display efter ordene "OK God rejse " eller "OK Have a nice journey", og at det ikke fremgik af back office, at kortet var checket ind. De vedhæftede korthistorikken, hvoraf fremgik, at kortet var checket ud på Kongens Nytorv st. kl. 10:06 og blev anvendt senere på dagen den 30. juli 2020 kl. 14:16:08.

Reg. udstyr dato/kl.	Modtaget. system dato/kl.	Regnskabsperiode	Handling	Transakt.type	Kortnr.	Kortsekv.nr.	Rejseseqv.nr.	Lokation	Udstyr / -nr.
30-07-2020 09:55:20	30-07-2020 10:18:54	01-07-2020	Check ind	Check ind	3084	735	266	Lergravsparken St.	VAL_21595 - 1389BA
30-07-2020 10:06:18	30-07-2020 10:18:29	01-07-2020	Check ud	Check ud	3084	736	266	Kongens Nytorv St.	VAL_21130 - 139C5D
30-07-2020 10:49:40	30-07-2020 10:58:05	01-07-2020	Kontrolmærke	Kontrol	3084	736		Gammel Strand St., Christiansborg	MARK_53565 - 09B98D
30-07-2020 14:16:08	30-07-2020 14:39:46	01-07-2020	Check ind	Check ind	3084	737		Kongens Nytorv St.	VAL_21116 - 13F72E
30-07-2020 14:16:08	30-07-2020 14:39:46	01-07-2020	Check ind	Check ind	3084	738	267	Kongens Nytorv St.	VAL_21116 - 13F72E
30-07-2020 14:25:41	30-07-2020 14:39:46	01-07-2020	Check ud	Check ud	3084	739	267	Lergravsparken St.	VAL_21607 - 13C600
31-07-2020 09:15:47	31-07-2020 09:38:44	01-07-2020	Check ind	Check ind	3084	740		Lergravsparken St.	VAL_21596 - 13F5EC

Under den efterfølgende klagesagsbehandling har Metro Service fremlagt logs fra rejsekortautomaterne og de standere, som har været i brug i tidsrummet, hvor klageren efter det oplyste checkede ind. På ingen af disse logs fremgår klagerens rejsekort.

ANKENÆVNETS BEGRUNDELSE:

Ankenævnet har tidligere til baggrund anmodet Rejsekort A/S om at få nærmere oplysninger om procesforløbet/transaktionen mellem standeren og rejsekort, når kortet føres forbi standeren, 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. Rejsekortet blev anvendt før og efter kontrollen, og anses derfor ikke for at være fejlbehæftet.

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.

Ankenævnet bemærker, at passageren kan kontrollere, om pågældende er korrekt checket ind ved at forsøge check-ind på ny samme sted og inden for et begrænset tidsrum uden mellemliggende check-ud, hvorved standen vil vise teksten "Rejsekortet er allerede checket ind".

RETSGRUNDLAG:

Af § 14 stk. 1 i lov om ændring af lov om trafikselskaber og jernbaneloven, fremgår jernbanevirksomhedernes adgang til at opkræve kontrolafgift og ekspeditionsgebyr for passagerer, der ikke foreviser gyldig rejsehjemmel (billetter og kort).

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.

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører følgende:

“I want to contest the fine as I paid my ticket with a valid card, and I have received a fine that was issued incorrectly. My resjekort is 308430 203 608 762 8.

I have checked in my card by the usual process, before entering metro and the machine did the sound of the check in when I tapped in my resjekort. Several people checked in just before me and after me and the same device of Kongens Nytorv, that was working fine. I used the same resjekort it checked in and out on the same morning and it was working well too. As a result, there were no reasons to suspect anything went wrong with my check in.

The controller steward number 21141 declared he cannot see the check in. Unfortunately, when checking in a Rejsekort there is no receipt given or mobile receipt to the customer. Thus, I had no proof for him to provide. My friend travelling with me also heard the card check in “Sound” when I tapped in, and can testify in writing if needed.

Lastly, I checked in in Kongens Nytorv where I believe videos recording can be sufficient to provide visual confirmation of the situation and good faith. Maybe the Metro device did not worked, but the fact that i tapped in should be enough. It is not fair to hold me responsible if there where no electronic recording on the metro company software, as what happens inside the device is out of my control.

I have nothing against the metro company, which i use everyday and is doing a very good transportation job. But it is not fair to ask a fine to customers that have a valid rejsekort card if they did the check in normally. I believe it is not correct or just to ask me to pay a fine for a ticket i duly purchased, with good faith, with a card that is valid and i use several times a day for years.”

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 card or ticket, for the entire journey, before boarding the train. In case of ticketing the passengers must at any time be able to present a valid card or ticket on demand to the ticket inspectors.

The complainant was issued a fare evasion ticket July 30th, 2020 as her rejsekort was not checked in.

In cases where passengers are not able to present a valid ticket, a fare evasion ticket will be issued. A fare evasion ticket 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 shown of the rejsekort history, the complainants card has not been checked in at the time she was meet by our steward – the last transaction before the stewards control mark at 10:49:40 am was a check out at Kongens Nytorv station at 10:06:18 am: [gengivet ovenfor]

It is correct that there are not given any kind of receipt to the customer when making a check in on a rejsekort. To secure a correct check in the customer herself must look at the display for the message **“OK. God rejse”**.

Unfortunately we do not accept a friends written confirmation as we cannot know if the sound the complainant and her traveler friend heard came from the complainants card or another travelers card – we only relates to the registrations on the card (history as shown above).

Video surveillance is not for use in case handling – the surveillance is solely for security reasons and for police use in relation to the investigation of criminal acts.

Based on the above we find the fare evasion ticket of 750 DKK correctly issued and maintained, as the complainant had not checked her rejsekort in could not present any other valid ticket or card at the time of inspection.

We can confirm that the fare evasion ticket already has been paid August 2nd, 2020 where the case was also closed in our system.”

Hertil svarede klageren:

“The valid travelling card was duly pressed against a check-in device as per usual. the sound of chek-in was made by the device.

1) when i called the company, **they confirmed that it is possible that the device indeed did the check in sound without registering the trip** on the card. I believe this is clearly misleading the traveller.

2) It is written on the attached received document "To secure a correct check in the customer herself must look at the display for the message **“OK. God rejse”**. " It is good to know, but this information is not clearly given to travellers. It is only asked to pay for a card and then put the RESJEKORT on a check in device. If there is a validation sound it gives the appearance of having checked in.

In terms of comment, I maintain that my card was valid and checked, as per normal process. This can be verified easily on the video recording. It should not be fair to give me a fine in this situation. I have paid for my ticket and validated it in good faith.”

Til dette har indklagede anført:

“The complainant made a check out at Kongens Nytorv station when using the card reader 139C5D. Below is a transaction list where it is shown, that the complainant used a check out card reader (marked with pink). The complainants transaction is marked with green and on the same green line it is shown that the complainant is not a “new user”, as it is transaction no. 736 on the card and journey no. 266 on the card.

Reg. udstyr dato/kl.	Modtaget. system dato/kl.	Regnskabsperiode	Handling	Transakt.type	Kortnr.	Kortsekv.nr.	Rejseseqv.nr.	Lokation	Udstyr / -nr.
30-07-2020 10:00:08	30-07-2020 10:18:19	01-07-2020	Check ud	Check ud	308430 54 698 7	2727	1044	Kongens Nytorv St.	VAL_21130 - 139C5D
30-07-2020 10:01:50	30-07-2020 10:18:19	01-07-2020	Check ud	Check ud	308430 19 500 5	1275	360	Kongens Nytorv St.	VAL_21130 - 139C5D
30-07-2020 10:02:04	30-07-2020 10:18:19	01-07-2020	Check ud	Check ud	308430 62 191 3	162	55	Kongens Nytorv St.	VAL_21130 - 139C5D
30-07-2020 10:06:18	30-07-2020 10:18:29	01-07-2020	Check ud	Check ud	308430 08 762 8	736	266	Kongens Nytorv St.	VAL_21130 - 139C5D
30-07-2020 10:06:28	30-07-2020 10:18:29	01-07-2020	Check ud	Check ud	308430 34 192 6	44	11	Kongens Nytorv St.	VAL_21130 - 139C5D
30-07-2020 10:06:46	30-07-2020 10:18:29	01-07-2020	Check ud	Check ud	308430 25 430 0	110	49	Kongens Nytorv St.	VAL_21130 - 139C5D
30-07-2020 10:08:05	30-07-2020 10:18:29	01-07-2020	Check ud	Check ud	308430 71 558 7	1117	435	Kongens Nytorv St.	VAL_21130 - 139C5D
30-07-2020 10:08:07	30-07-2020 10:18:29	01-07-2020	Check ud	Check ud	308430 06 128 0	37	10	Kongens Nytorv St.	VAL_21130 - 139C5D
30-07-2020 10:09:39	30-07-2020 10:18:29	01-07-2020	Check ud	Check ud	308430 50 526 6	270	113	Kongens Nytorv St.	VAL_21130 - 139C5D

It is of course a very unfortunately situation that the complainant makes a check out in stead of a check in, but we must refer to the Joint National Travel Regulations which states, that it is the customers responsibility to secure a valid ticket or card before entering the metro.

2.4. Purchase of travel document

Upon receipt of a travel document, the customer must ensure that the ticket is correct for the required purpose.

The customer must have a valid travel document when boarding and ensure that the rejsekort has been checked in correctly. The customer can extend the journey by purchasing more zones for the ordinary travel document. The purchase must be made while the ordinary travel document is still valid. The rules for purchase and use of a supplementary ticket adhere to the general rules for purchase of travel documents.

And regarding the inspection fee:

2.7. Inspection fee

2.7.1. Inspection of travel documents

Customers who do not, when requested, present valid travel documents, including having checked in correctly on rejsekort for their travel, must pay an inspection fee. This also applies if the customer has purchased a travel document via a mobile device that cannot be inspected, for example if it has run out of power or been broken.

The complainant states that she had called the company, who had confirmed that it is possible that the card reader indeed did the check in sound without registering the trip on the card.

It is not correct, that a customer can make a check in which is not registered on the card. Unfortunately we cannot get confirmed whether or not an employee have said so, as we do not know, who the complainant has spoken with - most likely there have been a misunderstanding and the employee have told or tried to explain the opposite.

The two-toned sound is the same whether a customer makes check in or an check out. Below is links where you can hear the two-toned sound.

Check in = <https://www.youtube.com/watch?v=jLxx63Q6Odg> ... 0:18/1:05

Check out = <https://www.youtube.com/watch?v=KdWXaBxG18A> ...0:15/1:14

As stated in our mail August 17th, 2020 the complainant makes a check in at Lergravsparken station at 09:55:20 and makes a check out at Kongens Nytorv station 18:06:18. In both cases the card reader makes the “accept” sound - the two-toned sound.

Unfortunately it is not possible to use the video recording in case handling, as this is only available for the police – this is also mentioned in our first reply regarding this case.

When handling cases like this we do not take into consideration whether a customer acted in good faith or not, or did not make the mistake on purpose.

As the complainant could not show a valid card or ticket upon inspection the fare evasion ticket was correctly issued and subsequently maintained.”

På ankenævnets vegne



Tine Vuust
Nævnformand