

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer:	2022-0075
Klageren:	XX Roth, Tyskland
Indklagede: CVR-nummer:	Metroselskabet I/S v/Metro Service A/S 21 26 38 34
Klagen vedrører:	Kontrolafgift på 750 kr. grundet rejse uden billet – klageren foreviste en kvittering for køb af en City-Pass-billet, da hun havde glemt selve billetten på sit hotelværelse
Parternes krav:	Klageren ønsker, at ankenævnet annullerer kontrolafgiften, og gør gældende, at hun fulgte stewardens vejledning og indsendte en kopi af billetten til Metro Service straks, da hun kom retur til hotellet
Ankenævnets sammensætning:	Indklagede fastholder kontrolafgiften Nævnshoved, landsdommer Tine Vuust Gry Middtun Torben Steenberg Helle Berg Johansen Anna Langskov Lorentzen

Ankenævnet for Bus, Tog og Metro har på sit møde den 12. september 2022 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, der 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, som er udlænding og skulle holde ferie i København, ankom om morgenen den 29. december 2021 fra Tyskland til Københavns Lufthavn. Her købte hun et DOT City Pass Large (72-timer) til 400 kr. med gyldighed indtil kl. 08:45 den 1. januar 2022:



Da hun senere på dagen ved 16-tiden rejste med metroen, var der efter Amager Strand st. kontrol af hendes rejsehjemmel. Imidlertid kunne hun ikke forevise ovenstående City Pass-billet, fordi hun ifølge det oplyste havde glemt billetten på sit hotelværelse og kun havde medtaget kreditkortkvitteringen, som hun foreviste til stewarden. Da en kvittering for et billetkøb ikke er gyldig som billet, blev hun pålagt en kontrolafgift på 750 kr.

Med hjælp fra hotelpersonalet sendte klageren en kopi af City Pass-billetten til Metro Service og anmodede dem om at frafalde kontrolafgiften. Som begrundelse herfor anførte hun, at stewarden havde sagt, at der ville blive set bort fra kontrolafgiften, når hun indsendte et billede af billetten.

Metro Service fastholdt dog kontrolafgiften den 30. december 2021 med henvisning til selvbetjeningssystemet og anførte, at efterfølgende forevisning af upersonlige billetter ikke accepteres af Metro Service, samt at kontrolafgifter ikke kan annulleres på baggrund af forevisning af en kvittering, da billetten i så fald ville kunne deles med andre passagerer.

Metro Service hørte ikke yderligere fra klageren, og da kontrolafgiften forblev ubetalt, sendte Metro Service den 29. marts 2022 en rykkerskrivelse til klageren og vedhæftede en ny faktura, som imidlertid ikke blev pålagt et rykkergebyr på 100 kr., som Metro Service ville have været berettiget til i henhold til reglerne i renteloven om rykkergebyrer.

Klageren svarede den 1. april 2022, at denne sag lå helt tilbage fra december, og at hun allerede med hjælp fra hotellet havde fremsendt kopi af billetten.

Da Metro Service på ny fastholdt kontrolafgiften, anførte klageren, at hun ikke bar ansvaret, idet hun havde gjort, som stewarden sagde.

Metro Service fastholdt fortsat kontrolafgiften, og den 13. april 2022 indbragte klageren sagen for ankenævnet.

SEKRETARIATETS BEHANDLING:

Metro Service har på forespørgsel fra sekretariatet oplyst, at de ikke fastholder kravet om betaling af et rykkergebyr på 100 kr., idet Metro Services medarbejder i den indledende sagsbehandling hos Metro Service fremsendte en rykkerskrivelse til klageren uden at pålægge skrivelsen et rykkergebyr, uanset at betalingsfristen var overskredet. Metro Service kræver herefter alene betaling af selve kontrolafgiften på 750 kr.

ANKENÆVNETS BEGRUNDELSE FOR AFGØRELSEN:

Ved kontrollen i metroen den 29. december 2021 kunne klageren ikke forevise gyldig rejsehjemmel, fordi hun ifølge det oplyste havde glemt sin City Pass-billet på hotelværelset.

Kontrolafgiften blev hermed pålagt med rette.

Den omstændighed, at klageren efterfølgende indsendte et billede af en City Pass-billet, der var gyldig på tidspunktet for hendes rejse, kan ikke føre til et andet resultat, da en City Pass-billet er en upersonlig billet, som kun er gyldig for ihændehaveren, der foreviser billetten ved kontrollen.

Det kan endvidere efter ankenævnets faste praksis ikke føre til et andet resultat, at klageren i kontrolsituationen foreviste en kreditkortkvittering for et køb på 400 kr. i DSB's billetautomat i Københavns Lufthavn, Terminal 3, da en kreditkortkvittering ikke er gyldig som billet.

Herudover finder ankenævnet på baggrund af Metro Services instruktion af deres stewards om ikke at sagsbehandle i kontrolsituationen, men kun at oplyse om adgangen til at klage, at det ikke kan lægges til grund, at stewarden lovede klageren, at kontrolafgiften ville blive frafaldet.

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 kunne forevise gyldig rejsehjemmel, 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. Ifølge § 2 i lov nr. 206 af 5. marts 2019 om ændring af lov om trafikskaber og jernbaneloven fremgår det, at jernbanelovens § 14, stk. 1, affattes således:

»Jernbanevirksomheder, der via kontrakt udfører offentlig servicetrafik, kan opkræve kontrolafgifter, ekspeditionsgebyrer og rejsekortfordringer.«

§ 14, stk. 2 og 4, ophæves, og stk. 3 bliver herefter stk. 2. Stk. 3 har følgende ordlyd:

“Passagerer, der ikke er i besiddelse af gyldig rejsehjemmel, har pligt til på forlangende at forevise legitimation for jernbanevirksomhedens personale med henblik på at fastslå passagerens identitet.”

I de fælles landsdækkende rejseregler (forretningsbetingelser), 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:

“ When i was in holiday from 29.12-01.01.22 in Denmark i had an issue with the Metro.

I realised that i forgot my ticket at my hotel and was on my way back to my hotel when me and my parents had to show our tickets. I only had a receipt of my ticket that was bought only a few hours ago on that day and he told me that i only need to sent a picture of my ticket when i arrive at my hotel and that i dont have to pay a fee. Crowne Plaza Kopenhagen helped me to sent an email and i never heard of this case until the beginning of april (payment reminder). I bought my metro ticket after arriving at the airport (29.12.2021, 08:45).

Unfortunately the assistent of the metro Service didnt accept my side of the story and told me even though i was given completely different Information on the 29.12.21 i have to pay the fee of 750 DKK until the 15.04.22. She also told me that my case i now closed for them and that they wont reply to any email sent from me after exchanging 3-4 emails. The only information that was given to me was, that I should contact you for this case. I hope you can help me to clarify this incident and thank you in advance for your help.”

Indklagede anfører følgende:

“ In the specific case, the complainant was ticket checked on December 29. 2021 at 16:02 between Amager Strand station - Ørestad station.

The complainant could not present a valid ticket but informed the steward that she had a valid Citypass which she had forgotten at the hotel and instead presented a receipt for a purchase of DKK 400 to the steward.

As the complainant had no ticket, a fare evasion ticket was issued in accordance with applicable rules.

The metro runs, like the other public transport in the Greater Copenhagen area, according to a self-service system, where it is the passenger's own responsibility before boarding, to secure a valid ticket or card, which can be presented on request.

In cases where a valid travel document cannot be presented on request, it must be accepted to pay a control fee, which for an adult amount to DKK 750. This basic rule is a prerequisite for the self-service system that applies to travel by public transport in the Greater Copenhagen area.

The above also appears from the common Travel Rules, which are on Din Offentlige Transport - <https://dinoffentligetransport.dk/en/customer-service/rules-and-guidelines/all-travel-regulations/>, and this also appears from the information boards, which are set up at all stations.

When dealing with cards/tickets without name and/or photo, these are impersonal travel documents, which are only valid if they are presented at ticket control.

A Citypass is an impersonal travel document that can be used by anyone and therefore the Citypass is only valid if it is shown to the staff in the control situation. Because a Citypass can be used by anyone, a subsequent presentation of the Citypass or a receipt/account statement will not result in neither complete nor partial cancellation of the fare evasion ticket.

In the Common Travel Rules, at the bottom of section 2.6, the rule is described as follows:

If a valid travel document cannot be presented on request during inspection, subsequent presentation will not be accepted, see section 2.7.5, however, concerning travelling without a Commuter Pass.

The complainant got the staff at the hotel to help make an objection to the fare evasion ticket and attached a photo of a Citypass. The complainant claimed that the steward had said that if she just sent a copy of the Citypass to Metro then the fare evasion ticket would be canceled.

All Metro's stewards are thoroughly trained in the travel rules and must in addition regularly pass partial exams to be approved for continued work in the operations department.

The steward in the specific case has been employed by Metro for several years. He does not remember this specific case, but we have asked him what he answers when he issues a fare evasion ticket to a passenger who states that he/she has forgotten his/her ticket.

The steward says that he never promises passengers that the fare evasion ticket will be canceled, but that he informs that you are welcome to make a written complaint to the Customer Service Department.

The steward's statement is in accordance with Metro's rules. The stewards must *never* carry out any kind of case processing. If a passenger does not have a valid ticket, they *must* issue a fare evasion ticket and tell the passenger where a complaint can be sent.

The following day, Metro replied to the complainant's email address that subsequent presentation of an impersonal travel document could not be accepted and that the fare evasion ticket was therefore maintained. The email also contained information on how the fare evasion ticket could be paid and information on how to make a complaint to the Appeals Board if wanted.

However, the fare evasion ticket was not paid, nor did Metro receive a complaint from ABTM and therefore a payment reminder was sent to the complainant's email address on 29 March 2022 (the email address is identical to the email to which the decision on the complaint was sent in December 2021). The payment reminder is attached as a pdf file.

As a result of the payment reminder, there was some correspondence in which the complainant reiterated that she believed when she sent a photo of a Citypass, the fare evasion ticket would be canceled. And where Metro in return sent the first response from December 30 where the fare evasion ticket is being maintained and then several emails with the same information; that a subsequent display of an impersonal travel document cannot be accepted and that the fare evasion ticket in addition to the fee for the payment reminder is maintained.

All correspondence is attached in chronological order.

As we have explained to the complainant in our e-mail correspondence, subsequent presentation of impersonal travel documents is not accepted and therefore we maintain both the fare evasion ticket itself and the reminder fee of DKK 100, a total of DKK 850.

In conclusion, we draw attention to previous cases processed in the Ankenævnet for Bus, Tog og Metro where the decision was in favor of the respondent, including case number 2016-0025 where ABTM wrote reasoned the decision as follows:

As we have explained to the complainant in our e-mail correspondence, subsequent display of impersonal travel documents is not accepted and therefore we maintain both the X itself and the reminder fee of DKK 100, a total of DKK 750.

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In conclusion, we draw attention to previous cases dealt with in the Ankenævnet for Bus, Tog og Metro where the decision was in favor of the defendant, including case number 2016-0025 where ABTM, among other things, justified the decision as follows:

ANKENÆVNETS BEGRUNDELSE:

Klageren kunne ved kontrollen den 2. januar 2016 ikke forevise gyldig rejsehjemmel, da han ikke kunne finde sit Citypas. Kontrolafgiften blev dermed pålagt med rette. Et Citypass er en upersonlig billet, som gælder i henholdsvis 24 eller 72 timer i zonerne 01-04 til et ubegrænset antal rejser. Klagerens efterfølgende indsendelse af kopi af et Citypass kan efter ankenævnets faste praksis ikke medtages i bedømmelsen af, om han var i besiddelse af gyldig rejsehjemmel ved kontrollen og kan derfor ikke føre til et andet resultat.

REASONS FOR THE APPEALS BOARD:

At the inspection on 2 January 2016, the complainant could not present a valid travel document as he could not find his City Pass. The control fee was thus rightly imposed.

A Citypass is an impersonal ticket that is valid for 24 or 72 hours in zones 01-04 for a unlimited number of trips.

The complainant's subsequent submission of a copy of a Citypass may, in accordance with the Board of Appeal's established practice, not be included in the assessment of whether he was in possession of a valid travel document at the ticket check and can therefore not lead to a different result."

Klageren har ikke indsendt yderligere bemærkninger til sagen.

På ankenævnets vegne



Tine Vuust
Nævnensformand