

## AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

<b>Journalnummer:</b>	2022-0299
<b>Klageren:</b>	XX 2300 København S
<b>Indklagede: CVR-nummer:</b>	Metroselskabet I/S v/Metro Service A/S 21 26 38 34
<b>Klagen vedrører:</b>	Kontrolafgift på 750 kr. grundet glemt check ind på Rejsekort
<b>Parternes krav:</b>	Klageren ønsker, at ankenævnet annullerer kontrolafgiften, og gør gældende, at han ikke kunne komme af Metroen, da han umiddelbart efter påstigning kom i tanke om, at han havde glemt at checke ind. Han har videre anført, at afgiftens størrelse ikke er proportional med forseelsen, samt der bør tilbydes et fair kontrolsystem, som tilgodeser samvittighedsfulde passagerer, som ikke har haft intension om at rejse uden billet  Indklagede fastholder kontrolafgiften
<b>Ankenævnets sammensætning:</b>	Nævnensformand, landsdommer Tine Vuust Jacob Ruben Hansen Torben Steenberg Helle Berg Johansen Dorte Lundqvist Bang

Ankenævnet for Bus, Tog og Metro har på sit møde den 12. april 2023 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](http://www.domstol.dk), [www.advokatnoeglen.dk](http://www.advokatnoeglen.dk) og /eller eget forsikringssselskab om eventuel forsikringsretshjælp.

### **SAGENS OMSTÆNDIGHEDER:**

Klageren steg om morgenen den 13. december 2022 ombord på Metroen på Østerport st. Idet han fik øje på kontrollører i toget, kom han i tanke om, at han havde glemt at checke ind på sit Rejsekort, men han kunne ikke nå at komme af toget igen, fordi dørene var ved at lukke.

Ved den efterfølgende kontrol blev klageren pålagt en kontrolafgift på 750 kr. for manglende check ind på Rejsekortet.

Samme dag anmodede han Metro Service om at frafalde kontrolafgiften og anførte som ovenfor, at der var tale om en forglemmelse, samt at han benytter Rejsekort dagligt og ikke har grund til at undgå at betale for sine rejser.

Metro Service fastholdt dagen efter kontrolafgiften med henvisning til, at Rejsekort skal være korrekt checket ind, før rejsen påbegyndes, samt at uanset, at der måtte være tale om en beklagelig fejl, kan Metro Service i deres bedømmelse af sagen ikke medtage passagerens intention eller gode tro.

### **ANKENÆVNETS BEGRUNDELSE FOR AFGØRELSEN:**

Ankenævnet lægger til grund som oplyst af klageren, at han glemte at checke sit rejsekort ind, før han steg på Metroen på Østerport st.

Det fremgår af Rejsekort rejseregler og af de Fælles landsdækkende 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 det ikke er en betingelse for at pålægge en kontrolafgift, at passageren bevidst har søgt at unddrage sig at betale for rejsen.

Som følge af det anførte, finder ankenævnet, at der ikke har foreligget sådanne særlige omstændigheder, at klageren skal fritages for kontrolafgiften.

Det bemærkes afslutningsvis, at Metro Services hjemmel til at opkræve kontrolafgift fremgår af jernbaneloven, og ankenævnet finder i den konkrete sag ikke belæg for, at kontrolafgiften skal nedsættes.

## 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 trafikelskaber 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. 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. Som passager uden gyldig rejsehjemmel betragtes også passager, der benytter kort med begrænset tidsgyldighed (f.eks. pensionistkort) uden for kortets gyldighedstid, eller hvis andre rejsebegrænsninger ikke overholdes (f.eks. for hvornår cykler må medtages, eller om der er betalt metrotillæg). Passagerer, der rejser alene på andres Rejsekort Personligt eller med en anden kundetype, end passageren er berettiget til, rejser uden gyldig rejsehjemmel. Kortindehaveren skal altid selv være checket ind på kortet på de rejser, hvor et Rejsekort Personligt benyttes. Rejsekortet må endvidere ikke være så slidt/tildækket, at navnet ikke kan læses.

## PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

### Klageren anfører følgende:

” I forgot to check in. I realized it as the doors were closing and I couldn't get out to correct my mistake. So I welcomed the steward without any resistance as I know he is just doing his job. He apologized but he had no choice and he encouraged me to file a case at [dinoffentligetransport.dk](http://dinoffentligetransport.dk) as I travel regularly, so it should be understandable that mistakes as this happen. So, I was hopeful, I filed the case, it was denied. I was redirected to The Appeal Board for Bus, Train and Metro and one of the first sentences I see is that forgotten check-in cases have low success. I even see my case is almost an exact copy of 2021-0061. Therefore, this case would not focus on the details of my experience. Instead, it would focus on what I believe is inappropriateness of the "fare evasion" tickets. Therefore, the appeal is to offer a fair fine that lives up to Danish cultural norms and doesn't abuse monopoly.

Starting with the name - from what I understand the kontrolafgift seems to be payment for the service of being checked - something I don't really need or have asked for; it serves the interests of the company, not mine, at least not directly (I do appreciate having such a good transport system, though). I'd argue that

process ineffectiveness and the fact it hasn't been improved recently are reasons to have such a fine, but I will add more on that further down.

As for the translated name - fare evasion - it implies intention and, similar to other cases of regular travelers, I feel this as unfair, even offensive qualification - possibly not very mature or intelligent to try to intentionally avoid paying the regular rate of DKK 14,4. In fact, if I was consciously trying to evade, I probably could have as I've seen people do - running out or with other tactics. Instead, often the people who follow the rules get penalized for single misstep.

This makes me wonder what the purpose of the fine is. To reduce abuse of the service? In that case, the controls and mechanisms do not seem fit for purpose as many cases show how the target group is not sufficiently correct. To seek profit\reduce losses from abuse? There might be something here. Considering the case of travelling in the city (2 zones like me), the fine is largely disproportionate to the regular fare - 52 times difference! This flat rate would be a lot more understandable if I were travelling on train on the route Copenhagen-Aalborg, for example. It makes me question my understanding of the Danish community and welfare system as being built on a fair proportional contribution, taking taxes as example. But a simple system like the one here - DKK 750 flat rate - is a low-cost solution for the companies, applying to all areas of operation. It is optimized for getting the absolute maximum of every case, so even if the system for preventing abuse of the service is ineffective, even small number of infringements would compensate a good portion.

In situation of, per my perception, a joint monopoly where fines are legally allowed but the rate is chosen by those who collect them (antitrust?), we as customers are the ones paying for the ineffectiveness of collecting the due service fees from those who abuse the service. And we don't seem to have a choice, apart from maybe choosing to get on personal cars (those who have them) in the cold months instead of following a lot more environmentally-friendly options such as public transport. Ironically, environment friendliness is part of the marketing for the public transport, yet such a practice makes me and maybe others question their choice.

Finally, even though Rejsekort has existed for years and is with a digital backbone - tracking data about travels thus making even automated case handling a possibility - no effort seems to have been put into utilizing that for fairer more proportionate and humane fine system. And the reason might be lack of incentive.

I hope this case with all aspects above can be an incentive."

### **Indklagede anfører følgende:**


"In the specific case, the complainant was meet by inspection December 13<sup>th</sup>. 2022 at 19:04 between Trianglen station and Islands Brygge, and as the complainant presented a rejsekort which was not checked in and as he could not present any other kind of valid travel document a fine was issued in accordance with applicable rules.

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 fine will be issued. This basic rule is a prerequisite for the self-service system that applies to travel by public transport. The above-

mentioned information is available in the [Joint National Travel Regulations](#) as well as on our information boards which are placed at every metro stations. The information boards at our stations contain travel information in both English and Danish.

On the information board – **Rejseinformation / Travel information** – following is stated:



**Hav billetten klar**  
**Have your ticket ready**

Husk at have gyldigt kort eller billet klar inden du står på – du kan ikke købe billetter i metrotoget. Hvis du rejser uden billet, vil du ved kontrol få en afgift på 750 kr.

**You must have a valid ticket before boarding** – you cannot buy tickets on the metro train. **Travelling without a valid ticket will lead to a fine of kr. 750.**

and




**Kontrolafgift** **Fare evasion tickets**

Husk, det er dit ansvar at have en gyldig billet eller kort til rejsen for både dig og dine eventuelle ledsagere, inden du stiger på metroen. Passagerer, der rejser uden gyldig billet eller kort, skal betale en kontrolafgift på 750 kr. Se [dinoffentligetransport.dk](http://dinoffentligetransport.dk) for yderligere information.

**Please remember that it is your responsibility to have a valid ticket or travel card for both you and your potential companions before entering the train. Passengers travelling without a valid ticket or card must pay a fare evasion ticket of kr. 750.** Go to [publictransport.dk](http://publictransport.dk) for applicable travel rules and penalty fares.

... on the information board – **Velkommen i Metroen / Welcome to the Metro** – the text below can be found:



Rejser med Metroen kræver gyldigt kort eller billet inden påstigning. Der findes Rejsekort- og billetautomater på alle stationer. Billetkontrol kan ske både under rejsen, ved udstigning og på stationen efter endt rejse. Har du ikke gyldigt kort eller billet udstedes kontrolafgift efter gældende regler.

**Travelling on the Metro requires a valid ticket.** Tickets are available from ticket vending machines at the stations. Ticket control may be performed during the journey, when leaving the train and at the station after the journey has ended. **Passengers boarding a train without a valid ticket will be liable to pay a fare evasion ticket.**

From the [Joint National Travel Regulations](#) following appears under section 2.4.:

#### **2.4. Purchase of travel document**

**Public transport in Denmark is an open system with widespread self-service, and it is therefore always the customer's responsibility to have a valid travel document upon boarding, including by ensuring that the Rejsekort has been checked in correctly. On receipt of a travel document, the customer must make sure that the single ticket is in accordance with requirements.**

### **2.4.3. Use of Rejsekort**

Rejsekort, issued by Rejsekort Rejseplanen A/S, can be used as a travel document, except on Bornholm and small islands. See travels at [www.rejseplanen.dk](http://www.rejseplanen.dk).

A Rejsekort must be checked in (see the list of validation rules below) before the start of the journey. For all means of transport for which check in takes place inside the means of transport, the customer must check in immediately after boarding, without any unnecessary delay, and before taking a seat. The Rejsekort must also be checked in on every transfer to a bus, train or Metro train, and checked out at the end of the journey.

... and furthermore under “2.4.3. Use of Rejsekort” ...

If the customer does not adhere to the aforementioned check in rules, the customer will be deemed to be without a valid single ticket, which incurs an inspection fee.

Under section 2.7.. it is stated:

## **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.

## 2.7.2. Fees

The Public Transport Operators determine the size of Inspection fees. The size of inspection fees can therefore be changed following a decision by the individual Public Transport Operator. This will be notified within one month and will appear on the website of the Public Transport Operator in question (see section 17).

The Inspection fee is issued by the Public Transport Operator the customer has travelled with and at the Public Transport Operators tariff.

The Inspection fee for the individual customer groups in the individual Public Transport Operator currently amounts to:

Public Transport Operator	Adult and Youth	Children and dogs	Bicycles
DSB	DDK 750	DDK 375	DDK 100
Arriva Tog	DDK 1.000	DDK 500	DDK 250
Nordjyllands Trafikselskab	DDK 1.000	DDK 500	DDK 100
Midttrafik	DDK 1.000	DDK 500	DDK 100
Sydtrafik	DDK 1.000	DDK 500	DDK 100
Fynbus	DDK 1.000	DDK 500	DDK 100
Trafikselskabet Movia	DDK 1.000	DDK 500	DDK 100
Metroselskabet I/S	DDK 750	DDK 375	DDK 250
BAT	DDK 750	DDK 375	DDK 100

It can be stated that there are no differentiated rates depending on the reason for the fine being issued – the only exception is which category the fine is issued to (adult, child, dog, or bicycle).

In addition, an inspection fee can be reduced to DKK 125 if the customer is in possession of a valid commuter card, which for some reason could not be presented at the time of ticketing but could be shown subsequently.

It is a very unfortunate situation that the complainant has found himself in, but since we want to treat everyone equally, we do not in the case handling take into account whether it may be the first time a passenger receives a fine, whether the lack of presenting a valid travel document is due to a conscious or unconscious action or whether a previous continuous travel pattern can be presented etc.

The Board of Appeal has stated in a previous decision that when you enter the train, you are considered to be a passenger and must be in possession of a valid card or ticket - if not, a fine is correctly issued.

Our stewards may perform random ticketing on any or all passengers in a train, and at all times, and any passenger who does not show a valid ticket or card will receive a fine, and at the same time, the stewards are instructed to inform the customer that if he or she has question or disagrees with the reason for the issuing of the fine, Customer Service can be contacted.

Contact information are to be found on the fine, which is handed over by the steward in connection with the issuance of the fine.

The stewards know nothing about how the individual cases are processed, or what might be the outcome of a given case.

Based on the above, we therefore consider the fine to have been correctly issued and subsequently maintained, which is why we uphold our claim of DKK 750.

In conclusion, we must refer to previous decisions in similar cases where the passengers had, for various reasons, forgotten to check in before entering the train – <https://www.abtm.dk/afgoelser/?show-cat=13439>”

### **Hertil har klageren bemærket:**

” I realize the chance anything changes for me is small, but if the case is focused not on the correctness of established process and the procedures that happened that seems to be the script, but on the fine system as I tried to do in my appeal, I have the tiny hope it might eventually lead to conversations and, why not, even changes in the system itself for the benefit of the conscious travelers.

I have no idea how the cases go, but I also hope that way, for you and your colleagues, it won't be one of the cases that look like all others and you will also find something new to try or have some fun with it.. I don't know, feel free :)”

### **Hertil har indklagede bemærket:**

” With reference to the Appeal Boards latest mail regarding the abovementioned complaint case we have following comments:

- We (the metro) are not alone in making the rules - this are made in cooperation between the Danish transport companies cf. the Joint National Travel Regulations
- We find it incontrovertible that the complainant has received a service (transport) that he had not paid for and due to this, the fine has been issued and following maintain correctly and in accordance with applicable regulations, cf. the Joint National Travel Regulations.”

På ankenævnets vegne



Tine Vuust  
Nævnensformand