

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer: 23-0181

Klageren: XX
2720 Vanløse

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

Klagen vedrører: Kontrolafgift på 750 kr. grundet manglede modtagelse af pendlerkort på telefonen inden påstigning

Parternes krav: Klageren ønsker, at ankenævnet annullerer kontrolafgiften, og gør gældende, at hun bestilte pendlerkortet og swiped betalingen i Mobilepay inden påstigning, og beløbet blev trukket fra hendes konto, hvorfor hun havde gyldig rejsehjemmel inden påstigning

Indklagede fastholder kontrolafgiften

Ankenævnets sammensætning: Nævnsformand, dommer Lone Bach Nielsen
Gry Midttun
Torben Steenberg
Helle Berg Johansen
Dorte Lundqvist Bang

Ankenævnet for Bus, Tog og Metro har på sit møde den 6. december 2023 truffet følgende

AFGØRELSE:

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

Klageren skal betale beløbet 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.

- oOo -

Hver af parterne kan anlægge sag ved domstolene om de forhold, som klagen har vedrørt.

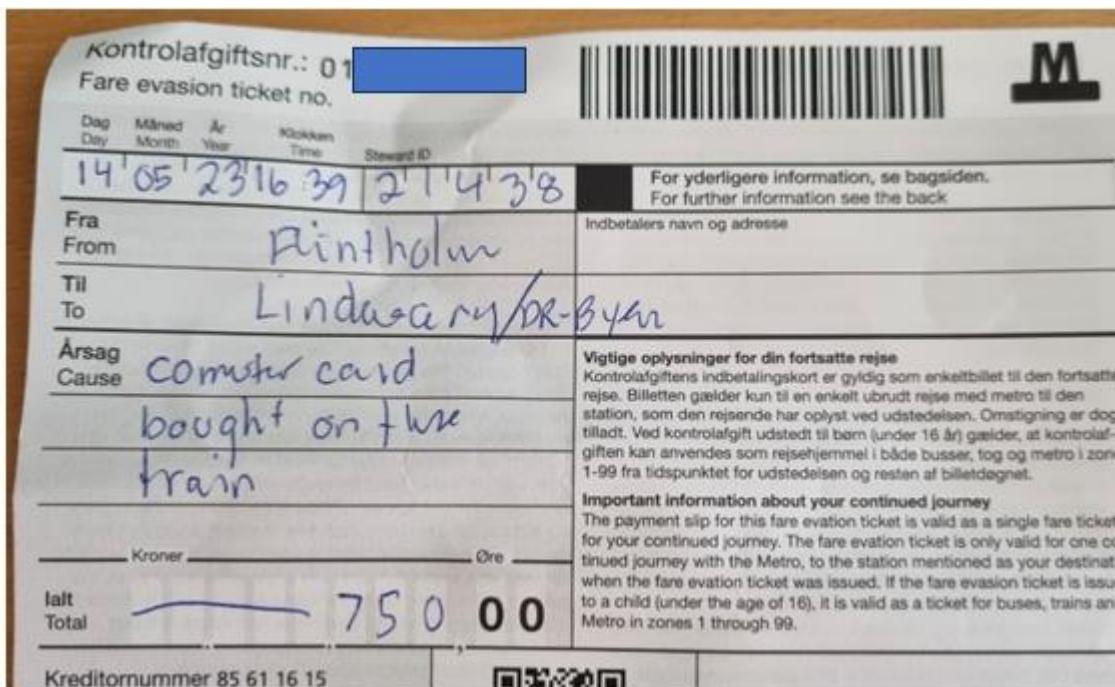
Klageren henvises til at søge yderligere oplysning om eventuel bistand i forbindelse med sagsanlæg fx på www.domstol.dk, www.advokatnoeglen.dk og /eller eget forsikringsselskab om eventuel forsikringsretshjælp.

SAGENS OMSTÆNDIGHEDER:

Klageren havde et pendlerkort med gyldighed fra den 11. april – 10. maj 2023.

Den 14. maj 2023 skulle hun rejse med Metroen fra Flintholm st., og da det forrige pendlerkort var udløbet, ville hun købe et nyt.

Ifølge klageren så hun Metroen ankomme til Flintholm st., og hun bestilte et pendlerkort i DSB-appen på sin telefon. Efter hun havde swiped betalingen for kortet i Mobilepay, skyndte hun sig om bord på Metroen. Her fik hun øje på en steward, der kontrollerede billetter, og da hendes betaling stadig loadede, hvilket hun regnede med skyldtes manglende 5G-forbindelse, gik hun hen til stewarden og viste ham telefonskærmen og bad ham vente, til betalingen var gennemført. Men stewarden nægtede at vente og udstede i stedet en kontrolafgift kl. 16:39. Da Metrotoget ankom til den næste station, Lindevang st., var betalingen gennemført. Derfor viste hun igen sin telefon til stewarden og bad ham om at annullere kontrolafgiften, men det kunne han ikke, når den allerede var skrevet, sagde han.



Ifølge Metro Service ankom Metroen til Flintholm st. kl. 16:36:57, og forlod stationen igen kl. 16:37:16, hvilket fremgår af loggen:

MD View Chart MetroLog VD View VID in Service SA Battery Data Files Messages						
Vehicles			Messages		Stations	
019	VID	Time	/	Type	Message	Station
	019	14. maj 2023 16:36:57		0	Arrival	Flintholm
	019	14. maj 2023 16:36:58		1	Open Doors	Flintholm
	019	14. maj 2023 16:37:15		2	Close Doors	Flintholm
	019	14. maj 2023 16:37:16		3	Departure	Flintholm
	019	14. maj 2023 16:38:43		0	Arrival	Lindlevang
	019	14. maj 2023 16:38:44		1	Open Doors	Lindlevang
	019	14. maj 2023 16:39:00		2	Close Doors	Lindlevang
	019	14. maj 2023 16:39:02		3	Departure	Lindlevang

DSB har oplyst til Metro Service, at loggen fra klagerens køb viser, at hun påbegyndte betalingen for pendlerkortet kl. 16:37:40, og at kortet blev hentet i appen kl. 16:39:45:

Betalingsoplysninger

Type	Beløb	Ref	Transaktion	Status	Transaktionshistorik								
Mobillepaybetaling	527,-	180438255	9737d8c2-ceb8-4dc8-83be-45caa7ab6003	Afsluttet	Skjul detaljer								
					<table border="1"> <thead> <tr> <th>Beløb</th> <th>Status</th> <th>Transaktions id</th> <th>Tidspunkt</th> </tr> </thead> <tbody> <tr> <td>527,-</td> <td>captured</td> <td>9737d8c2-ceb8-4dc8-83be-45caa7ab6003</td> <td>2023-05-14T16:37:40.000+02:00</td> </tr> </tbody> </table>	Beløb	Status	Transaktions id	Tidspunkt	527,-	captured	9737d8c2-ceb8-4dc8-83be-45caa7ab6003	2023-05-14T16:37:40.000+02:00
Beløb	Status	Transaktions id	Tidspunkt										
527,-	captured	9737d8c2-ceb8-4dc8-83be-45caa7ab6003	2023-05-14T16:37:40.000+02:00										

DSB pendler standard [14.05.23 00:00 : 14.06.23 03:59]																
Varetype	Vare	Produkt	Service	Fra	Til	Zoneantal	Tilladte zoner	Gyldig fra	Gyldig til	Passager	Stamkort	Pris	Billetnr	Bookingnummer	Hentet i app	Senest vist i app
Periodekort	540	DSB pendler standard	Standard	Valby, Vanløse, Nørrebro, Ryparken (1002)	København, City (1001)	2	1 2	14.05.23	13.06.23	Voksen	7370010	465,-	55RANKEE	-	14.05.23 16:39:45	21.05.23 07:23:06
Varetype	Vare	Produkt	Service	Fra	Til	Zoneantal	Tilladte zoner	Gyldig fra	Gyldig til	Passager	Stamkort	Pris	Billetnr	Bookingnummer	Hentet i app	Senest vist i app
Periodekort	525	DSB pendler metro tillæg	Standard	Valby, Vanløse, Nørrebro, Ryparken (1002)	København, City (1001)	2	1 2	14.05.23	13.06.23	Voksen	7370010	62,-	55RANKEE	-	14.05.23 16:39:45	21.05.23 07:23:06

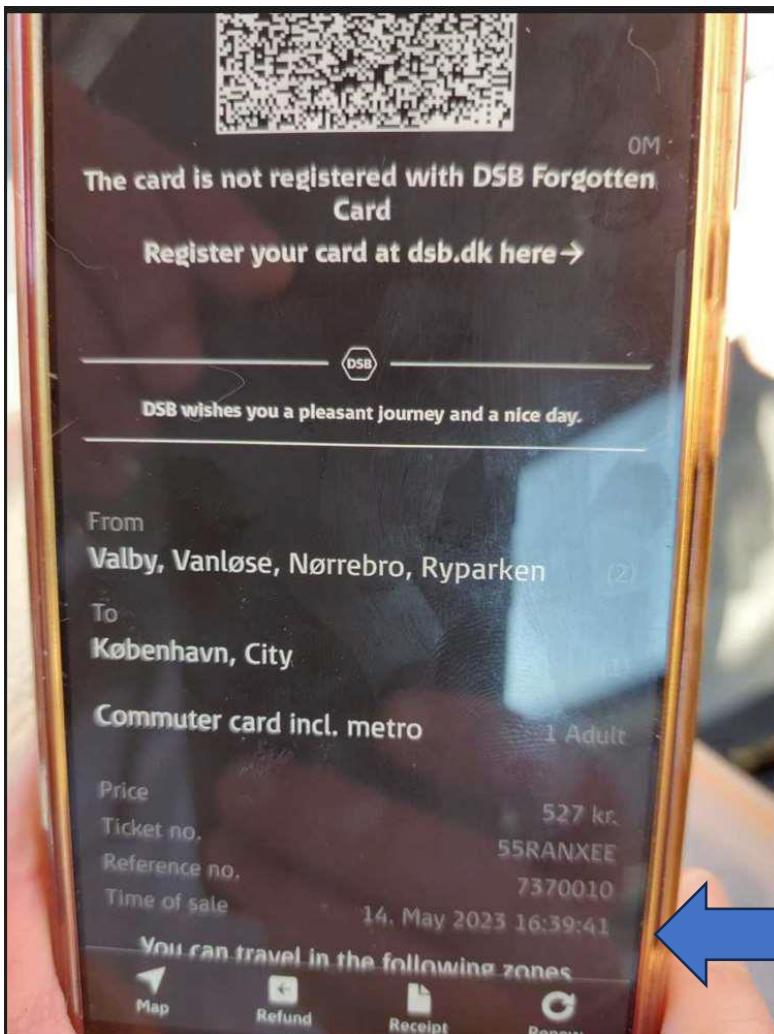
Den elektroniske kontrolafgift, som stewarden indtastede i forbindelse med kontrollen, blev udstedt kl. 16:39:13 på baggrund af, at pendlerkortet blev modtaget efter påstigning, idet klageren fornyede kortet ombord på Metrotoget:

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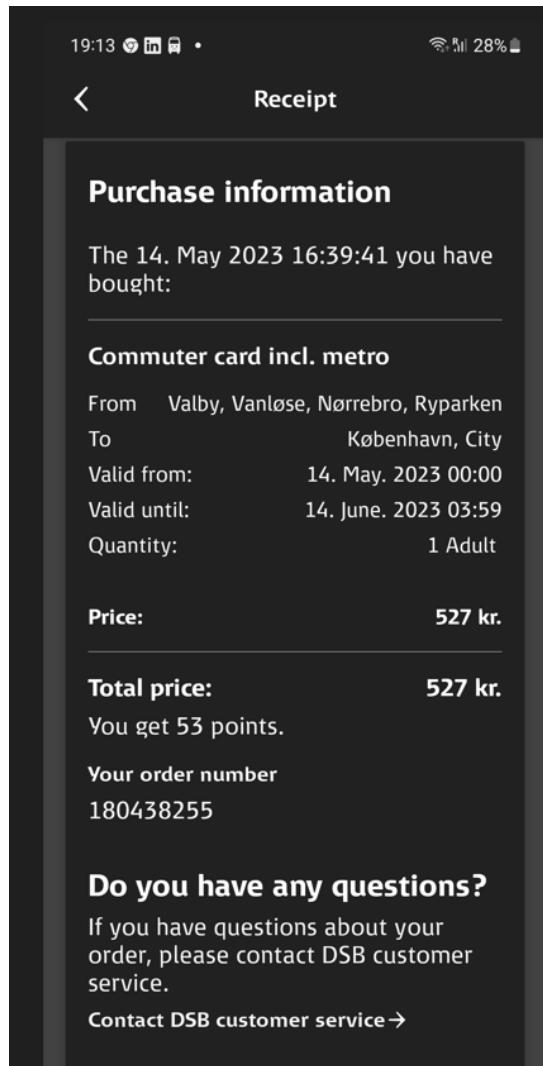
<FeeDate>2023-05-14T16:39:13.8930000</FeeDate>
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<StationTo>Lindlevang</StationTo>
<Adult>true</Adult>
<Child>false</Child>
<NumberOfBikes>0</NumberOfBikes>
<NumberOfDogs>0</NumberOfDogs>
<Cause>Modtaget efter påstigning</Cause>
<UnequalZones>false</UnequalZones>
<PaidCash>false</PaidCash>
<Amount>750</Amount>
<Cancelled>false</Cancelled>
<ChangedComment/>
<PaymentReceivedByUser/>
<Note/>
<TicketType>Periodekort</TicketType>
<SerialNumber/>
<SingleUseTicketStartZone xmlns:xsi="http://www.w3.org/2001/XMLSchema-instance" xsi:type="string">http://www.w3.org/2001/XMLSchema-instancehttp://www.w3.org/2001/XMLSchema-instancehttp://www.w3.org/2001/XMLSchema-instance

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Det foto, som stewarden tog af klagerens telefon, viser, at salgstidspunktet - "time of sale" - var kl. 16:39:41.



Klageren anmodede den 18. maj 2023 Metro Service om at annullere kontrolafgiften og gjorde gældende, som det er refereret ovenfor, og vedhæftede nedennævnte kvittering fra købet:



Den 23. maj 2023 fastholdt Metro Service kontrolafgiften med den begrundelse, at selvbetjenings-systemet kræver, at passageren har modtaget rejsehjemlen inden påstigning, hvilket også er skiltet på deres stationer. Det er ikke nok, at man har bestilt en fornyelse, at ordren er under behandling, eller at man har gennemført betalingen, inden man stiger om bord. Det afgørende er, at rejsehjemlen er modtaget på telefonen og er klar til visning.

Derpå indbragte klageren sagen for ankenævnet, hvor Metro Service blev bedt om at undersøge transaktionen i forbindelse med Mobilepay-betalingen hos DSB.

Metro Service har svaret, at DSB har oplyst, at betalingen blev påbegyndt kl. 16:37:40, og at købet blev afsluttet og var klar i appen kl. 16:39:45. På det foto, som stewarden tog, er time of sales kl. 16:39:41:

"At the appeal board's instigation, we have requested DSB for additional data and comments in relation to the complainant's payment of the period card renewal with Mobile Pay.

The email correspondence between DSB and Metro is attached as a pdf file "DSB about MobilePay_2023-0181".

This additional information from DSB also supports Metro's claim that the complainant only started ordering her renewal after she had boarded the train, as DSB has sent documentation that Mobile Pay has registered the complainant's payment at 16:39.

In our reply of 14 June 2023, we have forwarded the Control Room's electronic report from train no. 19, which documents when the train arrived at and departed from Flintholm station. Included in the same answer, it also appears from the report from DSB that the complainant started her order at 16:37:40 and that the purchase had only been completed and was ready in the app at 16:39:45.

In the reply of 14 June, the photo the steward took of the complainant's cell phone in the control situation is also attached. The cell phone screen shows that "Time of sale", i.e., the actual implementation of the purchase took place at 16:39:41.

It is of course regrettable that the complainant believes the system and Metro are rigid. But if you want to use a digital form of card/ticket, you have to wait for the ordered card/ticket to be finally downloaded to the mobile device before boarding, regardless of whether you are in a hurry. It is no different to, for example, buying a ticket from a machine; you must have the ticket in hand before you may board the train.

With the provision of the latest information, we believe it is beyond any doubt that the complainant did not have a valid travel permit when she boarded the train and that the inspection fee was issued correctly in accordance with current regulations and we therefore maintain our claim.

Bilag fra DSB:

"

Dette er fra mobilepay:

Transaktionsdetaljer X

Type	Betaling
Dato og tid	14.05.2023 16:39
Transaktions-ID	167E057370012795
Betalingssted	App payments DSB APP
Detaljer	180438255
Beløb	527,00 kr.
Transaktionsgebyr	0 kr.

De har registreret betalingen kl. 16.39.

Vi har efterfølgende registreret den kl. 16.37, da det er her kunden påbegynder sit køb.

Betalingsoplysninger						
Type	Betreb	Ref	Transaktion	Status	Transaktionshistorik	
Mobilepaybetaling	527,-	100430255	9737d8c2-ceb8-4dc8-83be-45caa7ab6003	Afsluttet	Skjul detaljer	
					Betreb	Status
					527,-	captured
					Transaktions id	Tidspunkt
					9737d8c2-ceb8-4dc8-83be-45caa7ab6003	2023-05-14T16:37:40.000+02:00

Derfor tænker jeg, at det må være Mobilepay, der tæller.

Så bliver der spurgt om købet kan fortrydes.

Købet kan fortryde øjeblikkeligt, hvis kunden swiper MP helt væk, inden vi får beløbet overført - MEN så vil købet fejle og kd vil ikke få billetten.

Købet kan også fortrydes i følge handelsbetingelser:

Ved køb før gyldighedsdato - fuld refusion

Ved køb på gyldighedsdato: Fratræk af benyttede dage plus 8 dage i gebyr af kortets værdi

Efter sidste gyldighedsdato: Intet at refundere

Hvis kd har lavet en fejl i sit køb, kan de ringe til 70131415 - kundeservice - umiddelbart efter købet, og få hjælp til refusion af kortet, uden gebyr på 8 dage

"

ANKENÆVNETS BEGRUNDELSE FOR AFGØRELSEN:

Således som sagen foreligger oplyst, kan ankenævnet ikke lægge til grund, at klageren havde modtaget pendlerkortet på sin mobiltelefon inden påstigning, eftersom Metroen forlod stationen kl. 16:37:16, klageren påbegyndte betningen ved at swipe i Mobilepay kl. 16:37:40, Time of sale på billetten er kl. 16:39:41, og pendlerkortet blev hentet i appen kl. 16:39:45

De Fælles landsdækkende rejsegeregler kræver, at pendlerkortet er modtaget på telefonen inden påstigning, for at passageren har gyldig rejsehjemmel.

Selv om den kontrolafgift, som stewarden udfyldte og udleverede til klageren, er tidsfæstet kl. 16:39, og klagerens betaling skete kl. 16:39:41, betyder det ikke, at klageren havde gyldig rejsehjemmel ved kontrollen.

Det afgørende er, hvornår kunden modtager rejsehjemlen på telefonen, hvilket skal ske inden påstigning.

Herefter blev kontrolafgiften til klageren pålagt med rette, og ankenævnet finder, at der ikke har foreligget sådanne særlige omstændigheder, at kontrolafgiften skal frafaldes, idet det ikke er en betingelse for at pålægge en kontrolafgift, at passageren bevidst har søgt at omgå rejsegereglerne.

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 trafikselskaber 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 rejsegæller (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 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.

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører følgende:

"I would like appeal for re-considering my case because Metro staff imposed me the penalty inappropriately. Last 14th May, I bought the monthly commuter card from 14 May to 14 June at the Flintholm metro station. After I pressed the payment through DSB app on my mobile phone, I saw the train is coming to the station. Since I had to be hurry and wanted to take the train, I checked the completed payment process. I definitely saw the confirmed message from DSB and I swiped to pay on my mobilPay. That's why I took on the train, and I saw the Metro staff also took on the train. Because I have already paid the money(I have checked my mobilPay history of withdraw 527 kr from my bank account) but the ticket is still delayed downloading, I went to the Metro staff to explain my situation and show the loading screen. However, he imposed me the fine immediately even though I showed my purchase history of mobilPay. While he was writing to my case, the ticket app was shown completely. I asked to cancel this but he said he cannot do. He recommended me to appeal the Metro customer service. Please check the time both ticket purchasing time and the penalty time, it was only 40 second difference due to only short time delaying the app processing. I strongly argue that it is too rigid and be unfair for me. Please consider again my case.

Indklagede anfører følgende:

"In the specific case, the complainant was met by our inspector May 14th. 2023 at 16:39 after the train had left Flintholm station. The complainant explained to the steward that she was in the process of ordering a monthly commuter card in the DSB app, but that the purchase had not yet been completed. As the complainant could not present a valid card or ticket on request, the steward issued an inspection fee in accordance with current regulations.

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 an inspection 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 appears both on the information boards at the stations and in the Joint National Travel Regulations, which can be read in their entirety at this link: [Joint-National-Travel-Regulations.ashx \(rejsekort.dk\)](#)

In her inquiries, the complainant states that she was in a hurry and that she ordered her commuter card at Flintholm station just as the train pulled into the station and that she thinks that it was a lack of internet connection that meant she could not show the newly purchased card at ticket control.

But if you want to use a digital travel permit such as a commuter card from the DSB app, you must make sure that the card has been fully received on the mobile device before you board the train - and if it is not, you have to wait for the next train. The travel rules state as follows:

2.4.2. In particular concerning use of mobile products (delivered via text message or app)

It is the customer's responsibility to ensure that the travel document has been received on the mobile device before boarding. It is not sufficient that the order has commenced.

On the electronic inspection fee, the steward has written the following remark:

<PeriodCardType>
<OtherText>fornyede periodekort ombord på tog 19.</OtherText> (translated into "Renewed commuter card onboard train 19").

From DSB, we have received a report on the complainant's purchase of commuter cards - see the attached PDF file and the clips below.

The first clip shows that the complainant activated payment via MobilePay at 16:37:40 and the next clip shows that the commuter card was not ready in the app until 16:39:45.

Betalingsoplysninger												
Type	Betreb	Ref	Transaktion		Status	Transaktionshistorik						
			Afsluttet	Skjul detaljer								
Mobilepaybetaling	527,-	180438255	9737d8c2-ceb8-4dc8-83be-45caa7ab6003			Betreb	Status	Transaktions id	Tidspunkt			
						527,-	captured	9737d8c2-ceb8-4dc8-83be-45caa7ab6003	2023-05-14T16:37:40.000+02:00			

DSB pendler standard [14.05.23 00:00 - 14.06.23 03:59]																
Varetype	Vare	Produkt	Service	Fra	Til	Zoneantal	Tilladte zoner	Gyldig fra	Gyldig til	Passager	Stamkort	Pris	Billetnr	Bookingnummer	Hentet i app	Serest vist i app
Periodekort	540	DSB pendler standard	Standard	Valby, Vanløse, Norrebro, Ryparken (1002)	København, City (1001)	2	1	2	14.05.23	13.06.23	Voksen	7370010	465,-	55RANXEE	-	14.05.23 16:39:45
Varetype	Vare	Produkt	Service	Fra	Til	Zoneantal	Tilladte zoner	Gyldig fra	Gyldig til	Passager	Stamkort	Pris	Billetnr	Bookingnummer	Hentet i app	Serest vist i app
Periodekort	525	DSB pendler metro tillæg	Standard	Valby, Vanløse, Norrebro, Ryparken (1002)	København, City (1001)	2	1	2	14.05.23	13.06.23	Voksen	7370010	62,-	55RANXEE	-	14.05.23 16:39:45

The steward noted that the complainant bought the commuter card on board the train (number 19). We have therefore obtained a printout from the electronic logbook which records where the train has been at what time, see the clip below.

The clip shows that train number 19 arrived at Flintholm station at 16:36:57 and that it closed the doors and left the station again at 16:37:16.

MD View Chart MetroLog VD View VID in Service SA Battery Data Files Messages						
Vehicles ↓			Messages ↓		Stations ↓	
VID	Time	/	Type	Message	Station	Arrival From
019	14. maj 2023 16:36:57		0	Arrival	Flintholm	Vanløse
019	14. maj 2023 16:36:58		1	Open Doors	Flintholm	Vanløse
019	14. maj 2023 16:37:15		2	Close Doors	Flintholm	Vanløse
019	14. maj 2023 16:37:16		3	Departure	Flintholm	Vanløse
019	14. maj 2023 16:38:43		0	Arrival	Lindenvang	Flintholm
019	14. maj 2023 16:38:44		1	Open Doors	Lindenvang	Flintholm
019	14. maj 2023 16:39:00		2	Close Doors	Lindenvang	Flintholm
019	14. maj 2023 16:39:02		3	Departure	Lindenvang	Flintholm

From the report from DSB, it is established that the complainant ordered/paid for her commuter card at 16:37:40 and that the card could not be displayed on the phone until 16:39:45.

The complainant has explained that she boarded the train at Flintholm station. As the complainant first ordered/paid for the card at 16:37:40 and also could not present the card before 16:39:45 it is beyond any doubt that she did not acquire a valid travel permit before she boarded the train and therefore we consider both the inspection fee and the subsequent case processing to be correct and thus maintain our demand for payment of the inspection fee of DKK 750."

Hertil har klageren anført:

"Honestly, I don't know what to say because Metro service seems only focused on the fact the time my ticket is completely downloaded their own system.

I am so sorry to their rigid idea that they don't care about the reason why my monthly commuter ticket was delayed to display on my mobile phone during the time.

As you can see the attached time which was from the penalty documentation at 14 May 16:39 and my purchase ticket was at 16:39:41. I am sure that I bought a ticket before I was boarding by mobilPay. I clearly remembered that I swiped right to pay and got a message from MobilPay "your payment is completed". After that I saw the screen was returned from MobilPay to DSB app and processing to download the ticket. That time the train was coming, therefore I decided to take on the metro.

What do you think? Do you think that I should have missed the train??? The downloading ticket time must complete within 1 min.

Actually, the Metro staff guy was taking on at Flintholm station together with me. I knew the guy is a staff in charge of checking the valid ticket for passengers. Therefore, I approached him by myself immediately to

show my processing ticket. Since I was surprised that my ticket was taking longer time to download, I wanted to show my receipt of mobilPay 527kr and explained the delaying situation as 5G disconnection or kind of DSB app error. However, the staff couldn't understand fully my English and the situation. He just had done his job as giving me the fine. After 40 seconds, when I showed my ticket to him, he said he has already wrote the note therefore he cannot cancel. He gave advice that I can appeal this to Metro service customer center and they will cancel.

I really feel that I am too naive to believe his advice. Because The Metro service specialist didn't know what was from the real problem about my case. The rule about the fine should be fair to all people who don't respect the duty of payment for the transportation, not for earning business profit of their business. They should consider the exemption of each case at least the case which is appealed from customers.

I swear that I didn't buy the ticket on boarding and the ticket payment was done by my side before taking on the train. If DSB mobile app can work perfectly without any system error or internet connection, I agree that it was my mistake. However, displaying the mobile ticket on the customer's mobile phone is not only customer's responsibility but also DSB system's responsible as well.

When people pay something with receipt, they expect that they are eligible to get the product or service from the purchase. If there has to do more actions (for instance, check to download completely for proving the payment), DSB should inform about it to the customer on their app such as pop up message like "You are done the first step and we got the payment from your bank. However, you need to wait until the next step to download the ticket on your mobile device completely. It can take between 10 second and 10 min. Therefore, your purchase step is not finished until you can see the ticket."

On the other hand, I understand that the Metro staff is tough job to check the ticket to the random people. Maybe it is impossible for them to consider each case. However, if some case is staged to the customer service with appealing, they should understand the fact more closely beyond the system. They are not robots!

Anyways, I am so sad and exhausted to explain how I am not guilty and I didn't have any intention to buy ticket on the train. Please review my case with kindness as human being."

På ankenævnets vegne



Lone Bach Nielsen
Nævnsformand