

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 23-0271
- Klageren:** XX
Schweiz
- Indklagede:** Metroselskabet I/S v/Metro Service A/S
CVR-nummer: 21 26 38 34
- Klagen vedrører:** Kontrolafgift på 750 kr. grundet rejse på et DSB Rejsepas, der ved en fejl var købt til forkerte datoer, og derfor ikke var gyldigt på rejsetidspunktet
- Parternes krav:** Klageren ønsker, at ankenævnet annullerer kontrolafgiften, og gør gældende, at det var en fejl, at han bestilte Rejsepasset til datoer en måned tidligere end rejsen i Danmark, og at hans alder på 80 år og manglende kendskab til dansk bør indgå i bedømmelsen af sagen
- Indklagede fastholder kontrolafgiften
- Ankenævnets sammensætning:** Nævnensformand, 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 -

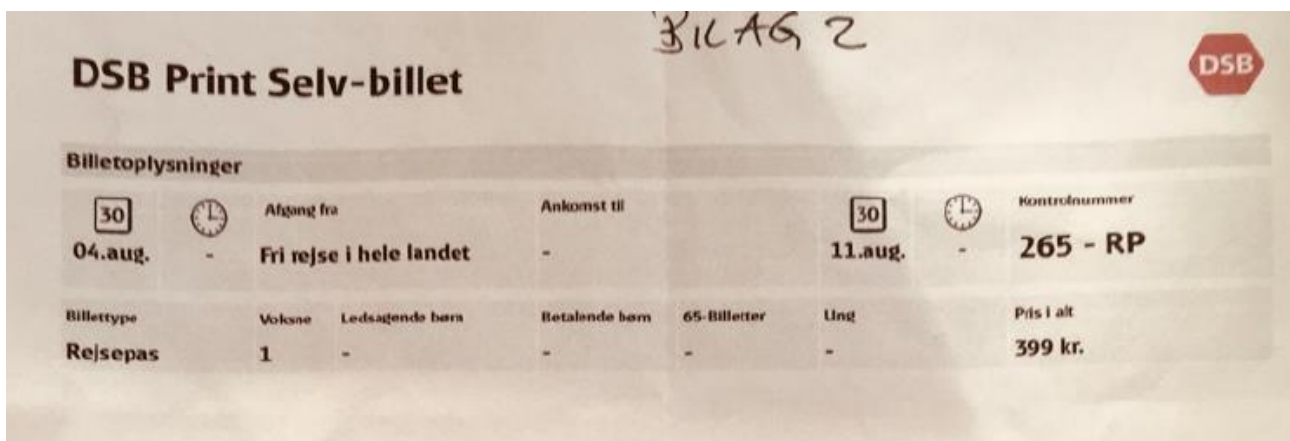
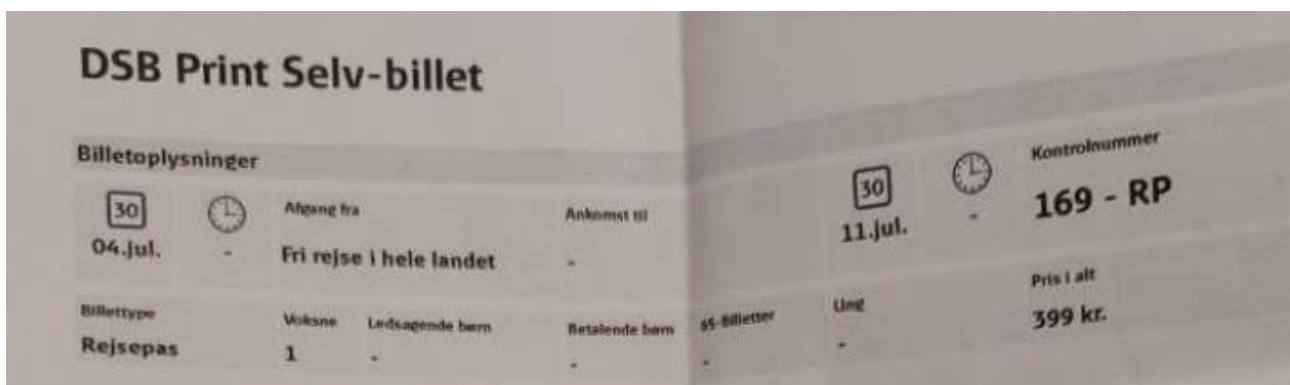
Hver af parterne kan anlægge sag ved domstolene om de forhold, som klagen har vedrørt.

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 forsikringselskab om eventuel forsikringsretshjælp.

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SAGENS OMSTÆNDIGHEDER:

Klageren og hans rejsefælle skulle på en rejse rundt i Danmark, og klageren købte til sig selv den 2. juli 2023 kl. 22:22 et Print Selv DSB Rejsepas til 399 kr. gyldigt i perioden 4. – 11. juli 2023 på DSB's hjemmeside. Klageren havde tidligere samme aften også købt et Rejsepas til sin rejsefælle - dog til datoerne 4. -11. august 2023:



Klageren og rejsefællen rejste i rundt i Danmark i perioden 4. – 11. august 2023, og den 5. august 2023 var der kontrol af deres billetter om bord på Metroen. Eftersom klagerens Rejsepas var gyldigt til den forrige måned, og nu var udløbet, blev han pålagt en kontrolafgift på 750 kr.

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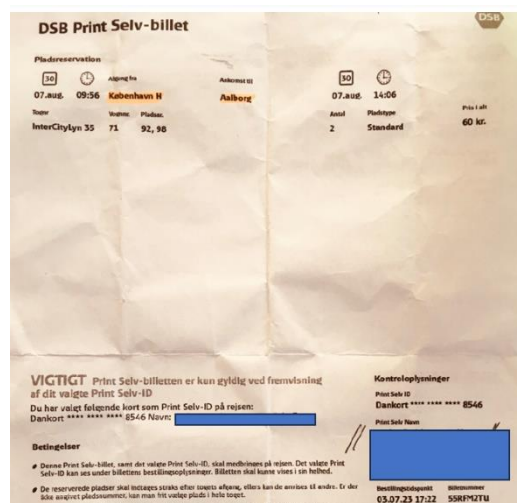
Dette klagede han over til Metro Service den 9. august 2023 og gjorde følgende gældende:

Vi købte disse to billetter (rejsepas) for perioden august 4 til august 11, 2023.

Den 2. august fløj vi fra Zurich til København (Bilag 4).
Den 5. august rejste vi fra Amager til København og en kontrol person så vores rejsepas for [redacted] og alt var OK. Vi fandt ud af at rejsepasset for [redacted] af en eller anden grund viste at rejseperioden var fra 4. juli til 11. juli. Vi blev klar over af vi havde begået en fejl. Vi håber på at I vil tilgive os vores fejl og annullere beløbet på kroner 750.- og især fordi at vi blev nød til at købe et andet rejsepas for [redacted] for Kroner 399.- (Bilag 5).

Vores reservation med DSB viser også at vi bestilte pladsreservation for august 7 - København-Ålborg (Bilag 6)
På forhånd tak. "

Pladsbilletten:



Klageren vedhæftede desuden deres flybilletter fra Zürich til København fra den 2. august 2023.

Metro Service fastholdt kontrolafgiften den 10. august 2023 med den begrundelse, at det var klagerens eget ansvar at sikre sig, at hans billet var gyldig, inden han steg om bord på Metroen:

“Like all other means of public transportation in the greater Copenhagen area, the Copenhagen Metro has a self-service system, where the passenger is responsible for being in possession of a valid ticket before boarding the metro. Therefore, we recommend adopting the habit of making sure that you check your ticket before boarding the metro.

The ticket's validity period is printed on the front of the ticket in both Danish and English. A ticket is valid for an unlimited number of trips within the validity period, and they are valid from the time of purchase. I can inform you that this information is also shown on the ticket screen during purchase.

I do understand that it was a regrettable and unfortunate mistake, and you did not had intentions to travel with the metro without being able to present a valid ticket. However, it is not possible for us to take the intention of the passenger and good faith and former travel historic or circumstances into consideration, I am sorry. We are obligated to treat all passengers equally according to the Joint National Travel Regulations.

Of course, you are always welcome to contact authorized personnel on the metro station or use the yellow call points on all stations to contact our control room, if you require assistance or directions. We are staffed 24 hours a day and are able to assist you over the call point or send a steward to the station if required.”

Klageren indbragte derefter sagen for ankenævnet.

ANKENÆVNETS BEGRUNDELSE FOR AFGØRELSEN:

Klageren begik en beklagelig fejl, da han den 2. juli 2023 købte et Rejsepas til sig selv med gyldighed til datoerne 4. -11. juli 2023, når han først skulle benytte Rejsepasset i august måned 2023.

Selv om den printede Rejsepasbillet var på dansk, finder ankenævnet, at det fremgik tilstrækkeligt tydeligt, at billetten var gyldig på datoer i juli måned ved betegnelsen “4 jul” og “11 jul” som vist på billetten ovenfor. Klageren havde da også tidligere samme aften bestilt et Rejsepas til de korrekte datoer i august måned til sin rejsefælle.

Den omstændighed, at klageren rejste med Metroen den 5. august 2023 med et udløbet Rejsepas, beroede på hans eget forhold, og kontrolafgiften blev dermed pålagt med rette. Det kan ikke føre til et andet resultat, at klageren ikke taler dansk og er 80 år.

RETSGRUNDLAG:

Ifølge § 2, stk. 1, jf. § 3 nr. 3 i lovebekendtgørelse 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.

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 ANKENÆVNEN:

Klageren anfører følgende:

“ On July 2 [den medrejsende] and I bought 2 rejsepas for our planned trip through Denmark from August 4 to August 11. On August 2 we flew from Zurich to Copenhagen. On August 5 we traveled from Amager to Copenhagen. A control person found that the rejsepas for [den medrejsende] was dated August 4 to August 11 so this was OK. However, on my rejsepas the travel period said July 4 to July 11 and I got a fine of DKK 750. Somehow we must have made a mistake when buying the tickets. Considering that I celebrated my 80th birthday on August 8 I hope that you will show some understanding for my mistake. In addition to that fine I had to buy another rejsepas for DKK 399 - so all in all a very unpleasant happening, I would like you to consider my lack of Danish and my age when dealing with Danish websites. As I have already pointed out it was an obvious mistake that happened when I made the reservation. The first ticket for my partner, [navn udeladt], I ordered for the correct period, but when I bought the second ticket I overlooked that the wrong date was on the form. As we only travelled to Denmark in August - much later than the dates on the ticket - Metro cashed in my money but did not have to provide the service. It was never my intent to cheat. In view of my advanced age (80) I hope you will forgive this mistake.”

Indklagede anfører følgende:

“The complainant was issued an inspection fee 5. August 2023, kl. 16:50 (04:50 pm) as he could not present a valid card or ticket when meet by inspection. The complainant presented a document of a DSB Print Selv-Billet valid for 4. July to 11. July covering a Rejsepas.

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 amounts 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.

On the information boards placed at all metro stations following are stated on **"Rejseinformation / Travel information"**:



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.




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 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 for applicable travel rules and penalty fares.

.... and on the boards **"Velkommen i Metroen / Welcome to the Metro"**:



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.**

According to the [Joint National Travel Regulations](#) it is always the customer's own responsibility to secure a valid card or ticket before entering the metro, and where this among others are stated:

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.

2.7. 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

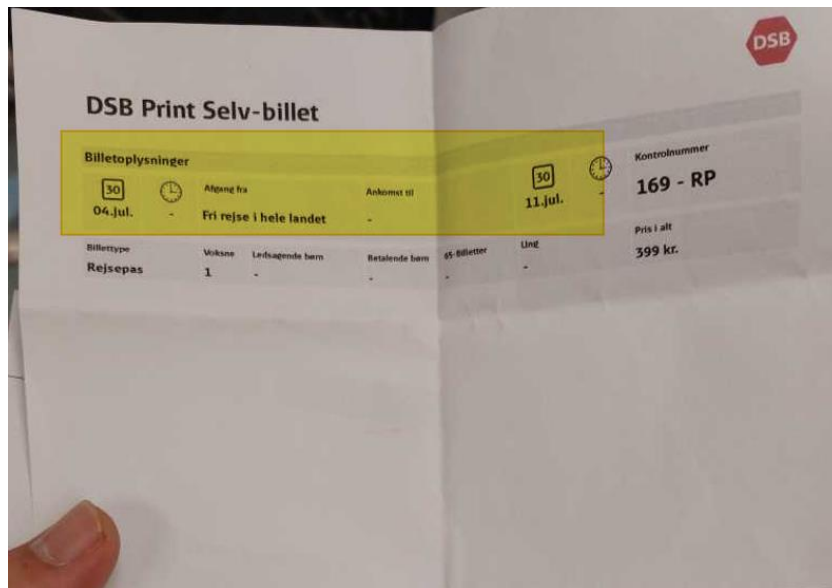
The Public Transport Operators determine the size of inspection fees. The size of inspection fees can therefore be changed following a decision by the individual Public Transport Operator. This will be notified within one month and will appear on the website of the Public Transport Operator in question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

At the time of inspection, the complainant presented the ticket below:



From the ticket (Rejsepas) it is clearly stated that this is valid from 4. July to 11. July .
When buying a ticket, the customer is obliged to check, that the ticket is in accordance with the requested.
If this is not the case, the transport company who sold the ticket must be contacted immediately for possible correction or reimbursement.
Especially in this case where the complainant and his travel fellow has bought a ticket each it would have been easy to see that the tickets were not alike.

As mentioned above it is according to the joint national travel regulations and information place on all metro stations the customers own responsibility to secure a valid ticket before entering the train.

It is of course a very unfortunate situation the complainant has found himself in, but as we want to treat all customers equally, we do not take into consideration whether the transaction was made in good or bad faith, or whether the customer may be a tourist, child, student or pensioner. We are only concerned with the fact that the customer must have a valid ticket before entering the metro, and that this can be presented at any time during the journey - if this is not the case, it must be accepted that an inspection fee is issued.

Based on the above we find the inspection fee correctly issued and subsequently maintained, and due to this we uphold our claim of 750 DKK."

Og videre:

"The case has been sent to DSB for comments and they have informed us, that they have refunded the ticket issued to [klagerens rejseledsager] , which was valid from 4/8.23 – 11/8.23.
The ticket issued to [klageren], valid from 4/7.23 till 11/7.23, has not been refunded.

Rejsepas [04.08.23 00:00 - 12.08.23 03:59] (Tilbagebetalt, Se tilbagebetaling)

Varetype	Vare	Fra	Til	Rejsedato	Hjemrejsedato	Voksen	Pris	Billetnr	Bookingnummer
Billet	55	(Alle)	(Alle)	04.08.23	11.08.23	1	399,-	55RF8HGA	-

Rejsepas [04.07.23 00:00 - 12.07.23 03:59]

Varetype	Vare	Fra	Til	Rejsedato	Hjemrejsedato	Voksen	Pris	Billetnr	Bookingnummer
Billet	55	(Alle)	(Alle)	04.07.23	11.07.23	1	399,-	55RF8S7T	-

Klagerens navn:



Rejseledsagerens navn:



Due to the above, [klageren] did not have a valid ticket.

According to the Joint National Travel Regulations it is the customers own responsibility that the ticket ordered and delivered is accordance with what the customer wishes and needs so the customer is in possession of a valid ticket that can be presented if met by inspection.

Due to our earlier mail of 22. August 2023 and this mail we must therefore continue to maintain, that the inspection fee to [klageren] was correctly issued and following maintained and due to this we uphold our claim of 750 DKK as the complainant did not have and could not present a valid ticket upon inspection."

På ankenævnets vegne

Lone Bach Nielsen
Nævnensformand