

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 23-0293
- Klageren:** XX
Storbritannien
- Indklagede:** Metroselskabet I/S v/Metro Service A/S
CVR-nummer: 21 26 38 34
- Klagen vedrører:** Kontrolafgift på 750 kr. grundet manglende forevisning af billet samt 100 kr. i rykkergebyr
- Parternes krav:** Klageren ønsker, at ankenævnet annullerer kontrolafgiften, og gør gældende, at han blev væk fra sin ægtefælle, der holdt deres billet, som var udskrevet samlet på et stykke papir. Kontrolløren ville ikke tage med i lufthavnen for at møde ægtefællen
- Indklagede fastholder kontrolafgiften og rykkergebyret
- Ankenævnets sammensætning:** Nævnensformand, dommer Lone Bach Nielsen
Torben Steenberg (2 stemmer)
Helle Berg Johansen
Dorte Lundqvist Bang

Ankenævnet for Bus, Tog og Metro har på sit møde den 7. februar 2024 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. og rykkergebyret på 100 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.

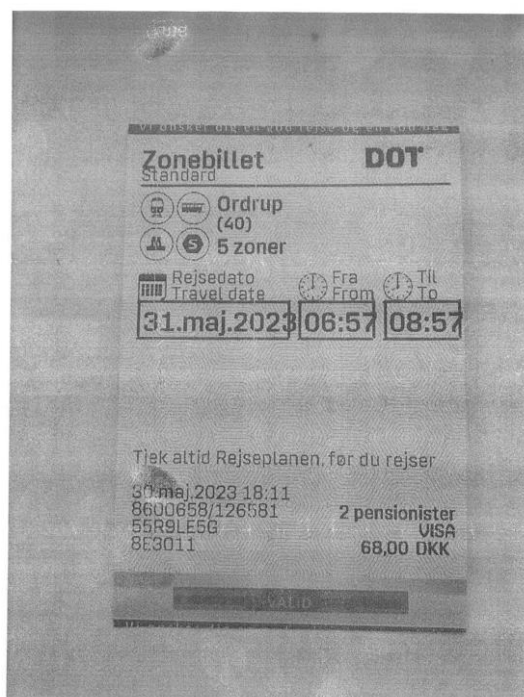
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Hver af parterne kan anlægge sag ved domstolene om de forhold, som klagen har vedrørt.

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 forsikringselskab om eventuel forsikringsretshjælp.

SAGENS OMSTÆNDIGHEDER:

Klageren og hans ægtefælle var på besøg i Danmark, hvor de den 31. maj 2023 skulle rejse fra Ordrup st. til Lufthavnen. Rejsen skulle foregå med skifte fra S-tog til Metro på Nørreport st. Inden rejsen havde de om aftenen den 30. maj 2023 købt en billet til dem begge i en billetautomat. Billetten blev udskrevet på ét stykke papir og var gyldig den 31. maj 2023 fra Ordrup st. i 5 zoner fra kl. 06:57 til kl. 08:57:



Klagerens ægtefælle havde parrets billet i sin taske, men i forbindelse med omstigningen fra S-tog til Metro kom de væk fra hinanden i menneskemylderet på Nørreport st., og ægtefællen signalerede med munden til klageren, at de måtte mødes i lufthavnen "airport". Klageren tog derfor den næste Metro mod lufthavnen for at mødes med ægtefællen.

På strækningen efter Øresund st. blev klagerens rejsehjemmel kontrolleret, og da han ikke kunne forevise nogen billet, blev han kl. 09:17 pålagt en kontrolafgift på 750 kr. Ifølge klageren forsøgte han at forklare stewarden, at ægtefællen ville kunne vise deres billet, hvis stewarden tog med til Lufthavnen, men dette afviste stewarden.

Kontrolafgiften:

```
<FeeDate>2023-05-31T09:17:51.3330000</FeeDate>
<Line>M1/M2</Line>
<StationFrom>Øresund</StationFrom>
<StationTo>Lufthavnen</StationTo>
<Adult>true</Adult>
<Child>false</Child>
<NumberOfBikes>0</NumberOfBikes>
<NumberOfDogs>0</NumberOfDogs>
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<UnequalZones>false</UnequalZones>
<PaidCash>false</PaidCash>
<Amount>750</Amount>
<Cancelled>false</Cancelled>
<ChangedComment/>
<PaymentReceivedByUser/>
<Note/>
<TicketType>Intet forevist</TicketType>
<SerialNumber/>
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<SingleUseTicketNumberOfZones xmlns:xsi="http://ww
<RebateCardNumberOfValidations xmlns:xsi="http://ww
<RebateCardType/>
<RebateCardIsChild>false</RebateCardIsChild>
<PeriodCardZones/>
<PeriodCardType/>
<OtherText>pax sagde hans kone havde hans billet <
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Klageren anmodede samme dag, den 31. maj 2023, Metro Service om at annullere kontrolafgiften og gjorde gældende:

”

I request cancellation of this ticket, on the grounds that I had purchased a valid ticket for travel from Ordrup to Copenhagen Airport. This was a joint ticket with my wife which she kept in her bag.

When changing from S-train to Metro my wife joined the Metro train but , being hampered by luggage, I was too slow and the doors closed.

As my wife left she mouthed ‘Airport’ so I joined the next train where your inspector found me.

Communication was difficult but I tried to explain that I had bought a ticket. I could not produce it, but my wife would show it to her at the Airport.

The inspector did not accept this.

I have not evaded payment. I enclose a copy of the travel ticket and the notice of fare evasion.

”

Metro Service fastholdt kontrolafgiften den 14. juni 2023 med den begrundelse, at det kræves for at have gyldig rejsehjemmel at klageren var i besiddelse af og klar til at forevise en gyldig billet før påstigning og under rejsen:

”You have received an inspection fee, as you were unable to present a valid ticket during a ticket inspection in the Metro. I am very sorry, but we are unable to accommodate a reduction or cancellation of the inspection fee.

Like all other means of public transportation in the greater Copenhagen area, the Copenhagen Metro employs a self-service system where you must be in possession of and ready to present a valid ticket, before boarding the Metro and during travel.

I understand that this was just an unfortunate mistake, and I am sure you did not intend to travel without a valid ticket.

However, it is not possible for us to take the intention of the passenger and good faith into consideration, as we are obligated to treat all passengers equally and in compliance with the travel rules.

Like all other means of public transportation in the greater Copenhagen area, the Copenhagen Metro employs a self-service system where you must be in possession of and ready to present a valid ticket, before boarding the metro and during travel.

This applies regardless of the circumstances. It is solely a matter of the necessary travel document not being acquired in accordance with the travel rules before boarding. A ticket is only valid when you can present it on demand at inspection.

Of course, you are always welcome to contact the steward on the 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."

Dette fik klageren til at skrive til Metro Service endnu engang, idet det aldrig havde været muligt for ham at være i besiddelse af billetten, som de krævede, fordi billetten til dem begge blev udskrevet samlet på ét stykke papir, som ægtefællen puttede i tasken:

"

You have rejected my request for cancellation of the Inspection Fee on the grounds that I should have been in possession of a valid ticket.

This was impossible. I never had a ticket. My wife and I paid for travel at a machine in Ordrup. Only one *joint* ticket was issued. My wife took care of it and thus I never had a paper ticket in my possession, even though I had paid for it.

Unfortunately, my wife and I were separated by the doors of her train. I asked the inspector to come with me to the airport station where my wife would show her our *joint* ticket. The inspector did not wish to do that.

How can I be fined for not doing something which your system prevented by issuing one ticket rather than two?

There was no 'unfortunate mistake'. We had paid for our travel (I sent a copy of our ticket with my last letter). We were travelling legitimately. "


Metro Service fastholdt kontrolafgiften på ny og fastsatte betalingsfristen til den 21. juli 2023. Den 27. juli 2023 sendte de klageren en betalingspåmindelse med et rykkergebyr på 100 kr., hvorefter klageren indbragte sagen for ankenævnet.

ANKENÆVNETS BEGRUNDELSE FOR AFGØRELSEN:

Det følger af ankenævnets faste praksis, at en upersonlig billet, som den klageren og ægtefællen havde fået udstedt, skal kunne forevises ved selve kontrollen, da en sådan billet kun er gyldig for ihændeoveren. I den konkrete sag må "ihændeoveren" forstås således, at de, som billetten gælder for, skal rejse samlet, så en kontrollør kan sikre sig, hvem det er.

Herudover bemærker ankenævnet, at billetten udløb kl. 08:57, hvilket indebærer, at sidste påstigning skulle ske senest på dette tidspunkt. Kontrolafgiften blev udstedt kl. 09:13 efter, at Metroen havde forladt Øresund st.

Når man ser på Metroens afgangstider omkring dette tidspunkt, fremgår det, at turen fra Nørreport st. ved dørlukning kl. 09:02 til Øresund st. kl. 09:11 tager 9 minutter:

		Kørselsretning
09:01	Nørreport St. (Metro)	
09:02		
09:03	Kongens Nytorv St. (Metro)	
09:04		
09:05	Christianshavn St. (Metro)	
09:06		
09:07	Amagerbro St. (Metro)	
09:08		
09:09	Lergravsparken St. (Metro)	
09:09		
09:11	Øresund St. (Metro)	
09:11		
09:12	Amager Strand St. (Metro)	
09:12		
09:14	Femøren St. (Metro)	
09:14		
09:16	Kastrup St. (Metro)	
09:16		

Klageren må dermed være steget på Metroen på Nørreport st. omkring kl. 09:01, hvilket var efter billetens udløb kl. 08:57.

Den omstændighed, at ægtefællen holdt deres billet, og at klageren ved at blive adskilt fra ægtefællen dermed var i risiko for ikke at kunne forevise nogen rejsehjemmel ved en eventuel kontrol, er en risiko, som klageren selv og ikke Metro Service må bære.

Hertil kommer at billetten isoleret set for klagerens vedkommende var udløbet. Det fremgik på engelsk på selve billetten, at den udløb kl. 08:57.

Herefter blev kontrolafgiften til klageren pålagt med rette, og ankenævnet finder, at der ikke har foreligget sådanne særlige omstændigheder, at kontrolafgiften skal frafaldes.

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 ANKENÆVNET:

Klageren anfører, at han ikke kunne forevise en billet af flere årsager. Automaten udstedte kun én billet for to rejsende, og hans ægtefælle holdt billetten. Undervejs mod Metroen under jorden, blev klageren og ægtefællen væk fra hinanden, og kontrolløren om bord på Metroen ville ikke vente på at tage med klageren til lufthavnen, hvor klageren og ægtefællen ville møde hinanden igen, og hvor ægtefællen ville kunne forevise billetten for kontrolløren. Det ville aldrig have været muligt for klageren at forevise sin egen billet, således som Metro Service kræver.

Indklagede anfører følgende:

“ The complainant received an inspection fee 31. May 2023 at 09:17 after the train has left Øresund station towards the airport. The inspection fee was issued as the complainant could not present a valid ticket upon inspection.

The metro runs, like all 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.

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 customers own responsibility to secure a valid card or ticket before entering the metro - 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

The complainant has stated that he due to luggage was hampered and to slow to get on board the metro together with his wife before the doors closed. Only his wife who had their ticket went on board the metro, and he was left at the station. He also stated that the inspector refused to go to the airport, where he told his wife had the ticket and was waiting for him.

When travelling on a joint travel document the customers must be together the hole time and be able to present the ticket including all persons.

The stewards are not obliged to go with the customer to wherever he or she is going - it is the customers responsibility to be able to present a valid ticket when ever he or she is asked for it.

As the complainant's wife discovered that her husband did not enter the metro together with her, she could have chosen to get of at the first station and waited for him to arrive with the next train.

As mentioned above it is according to the joint national travel regulations the customers own responsibility to secure a valid ticket before entering the train and be able to present this at any time upon request..

An ordinary zone ticket purchased from a ticket machine is an impersonal travel document which - because it can be used by anyone - is only valid if it is presented in the control situation. Subsequent presentation of an impersonal ticket or presentation of e.g. a bank statement is therefore not taken into account. It is described thus in the Travel Regulations section 2.6.:

2.6. Inspection of travel documents

Throughout the journey, the customer must cooperate with ticket inspection staff. This obligation also applies immediately after the customer has left the bus or train, and until they have left the platform or the Metro area. If the inspection staff consider this necessary, the police may be involved or called in during the inspection. See also section 2.7.4 concerning identification.

Some single ticket types can be purchased as a Print-Self single ticket. In the event of a ticket inspection, a Print-Self paper or screen single ticket must be presented together with the relevant ID. The single ticket must be presented in its entirety and it must be possible to scan the code on the single ticket.

Mobile products must be presented to the inspection staff – e.g. by scrolling or navigating to the correct window, as required, or by the customer handing the phone to the inspection staff. It must be possible to verify the validity of the mobile product by the inspection staff sending a control message or making a verification call to the phone number for which the mobile product was ordered. The screen of the digital device must be in such a condition that inspection is possible.

Only original single tickets and cards are accepted as valid travel documents. Copies and images of single tickets and cards (Print-Self single tickets excepted) are therefore not accepted.

If the customer travels on his/her Rejsekort under a customer category to which the customer is not entitled, the customer may be charged an inspection fee.

For example, if the customer is travelling under the 'child' customer category on a Rejsekort Anonymous or a Rejsekort Flex, the inspection staff may require proof that the customer is entitled to travel under the 'child' customer category. Similarly, a customer with a Rejsekort Personal must present a form of ID if the inspection staff so request, see section 2.7.4.

If a valid travel document cannot be presented on request during inspection, it will not be possible to have to get a reduction or cancellation of a inspection fee by subsequent presentation of travel documents, see section 2.7.5, however, concerning travelling without a Commuter Pass.

It is indisputable that the complainant did not present a valid ticket at the time of inspection and due to this the inspection fee must be considered correctly issued.

It is of course a very unfortunate situation the complainant and his wife found themselves 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.

As the complainant did not pay the inspection fee in due time a payment reminder add a 100 DKK fee was sent on 27 July 2023.

Based on the above we find the inspection fees correctly issued and subsequently maintained as well as the payment reminder, and due to this we uphold our claim off 850 DKK (the inspection fee 750 DKK and the reminder fee 100 DKK).

Finally, we must refer to the Appeal Boards earlier decisions in similar cases where the outcome was settled in favor of the defendant company.”

På ankenævnets vegne



Lone Bach Nielsen
Nævnensformand