

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer:	23-0314
Klageren:	xx Nederlandene
Indklagede:	Metroselskabet I/S v/Metro Service A/S
CVR-nummer:	21 26 38 34
Klagen vedrører:	Kontrolafgift på 750 kr. grundet manglende billet
Parternes krav:	Klageren ønsker, at ankenævnet annullerer kontrolafgiften, og gør gældende, at han mistede sin billet i et skifte mellem to metrolinjer. Han har kvittering for at have betalt for billetten Indklagede fastholder kontrolafgiften
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.

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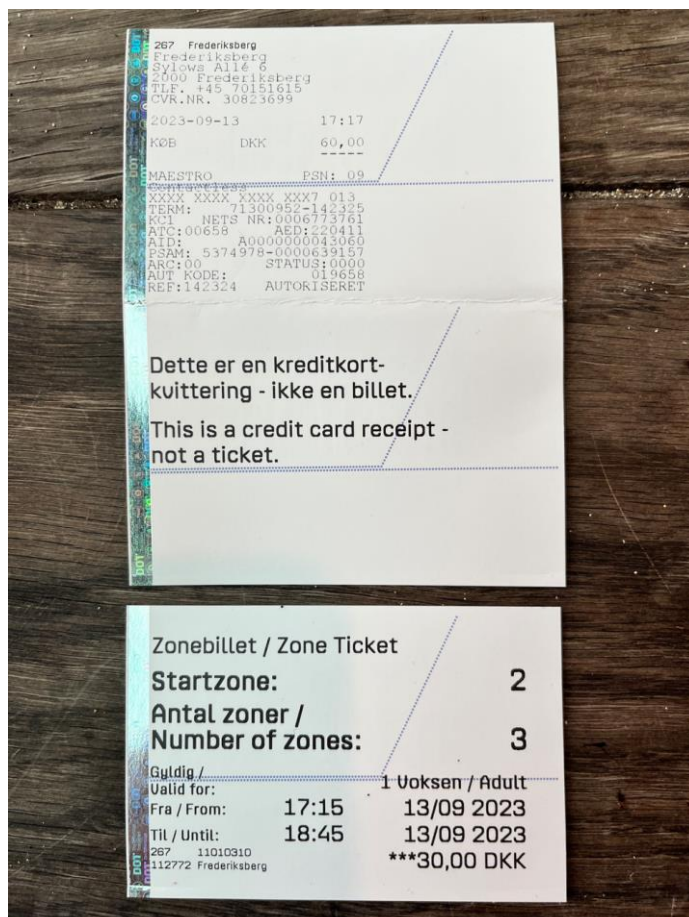
Hver af parterne kan anlægge sag ved domstolene om de forhold, som klagen har vedrørt.

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 forsikringssselskab om eventuel forsikringsretshjælp.

SAGENS OMSTÆNDIGHEDER:

Klageren og hans kollega var turister i København, hvor de rejste med Metroen den 13. september 2023 mod Københavns Lufthavn. Forinden havde de købt to billetter, men klageren mistede sin billet undervejs i et skifte mellem to metrolinjer. Han kunne derfor ikke forevise nogen billet, da han blev kontrolleret på strækningen fra Kastrup mod lufthavnen, hvorfor han blev pålagt en kontrolafgift på 750 kr. kl. 17:40.

Dette klagede han over til Metro Service samme dag og vedhæftede et foto af kollegaens billet og af kvitteringen for betalingen af 60 kr. for billetterne:



Den 18. september 2023 fastholdt Metro Service kontrolafgiften, da rejsereglerne pkt. 2.6 kræver, at en upersonlig billet forevises ved selve kontrollen for at være gyldig, og at det ikke kunne føre til et andet resultat, at klageren var i god tro og havde mistet billetten, eller at der var kvittering for betalingen af to billetter.

Klageren skrev at han følte sig diskrimineret som turist, når man ikke accepterede en kvittering for betalingen af billetten.

Metro Service oplyste, at reglerne er ens for såvel turister som danske statsborgere. Herefter gjorde klageren gældende, at der er undtagelser til alle regler, og at de burde kunne annullere kontrolafgiften pr. kulance. Metro Service fastholdt, at passageren skal kunne forevise en upersonlig billet ved selve kontrollen, og klageren skrev på ny, at han var udsat for diskrimination, fordi en turist aldrig vil kunne forevise andet end en upersonlig billet:

“Again, despite, that you report that everything was done correctly and which I also do not dispute, I remain of the opinion that this is highly discriminatory. We have proof that the ticket was purchased and that tourists have an impersonal ticket at all times, in fact we do not have personalised tickets because we are tourists. I cannot help feeling that we are dealing with a special demand and situation here. Now what is the problem in making an exception here from your side for this. Perhaps adjusting the amount because there is indeed a proof handed over. By the way, I find it very disappointing that the manager does not want to be contacted about this. I really hope something more goodwill can be offered.

Metro Service henviste derpå klageren til at indbringe sagen for ankenævnet, hvilket han gjorde.

ANKENÆVNETS BEGRUNDELSE FOR AFGØRELSEN:

Klageren kunne ved kontrollen i Metroen den 13. september 2023 ikke forevise nogen gyldig rejsehjemmel, fordi han efter det oplyste havde tabt billetten undervejs på rejsen i skiftet mellem to metrolinjer.

Kontrolafgiften blev hermed pålagt med rette, idet det er et krav, at passageren kan fremvise den upersonlige billet, som kun er gyldig for ihændevederen, i forbindelse med selve kontrollen.

Det kan efter ankenævnets faste praksis ikke føre til et andet resultat, at klageren har kunnet fremlægge kollegaens billet samt kvitteringen for køb af 2 billetter á 30 kr., i alt 60 kr. Grunden er, at en kreditkortkvittering ikke er gyldig som billet.

Pligten til at betale kontrolafgift er ikke betinget af, om passageren har handlet bevidst, 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. Ankenævnet har ikke mulighed for at statuere, at en trafikvirksomhed skal frafalde en kontrolafgift pr. kulance, som klageren ønsker.

Sluttelig bemærker ankenævnet, at det ikke ses at være et udtryk for forskelsbehandling, når rejsereglerne kræver, at alle passagerer foreviser en upersonlig billet i forbindelse med selve kontrollen.

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.

PARTERNES ARGUMENTER OVER FOR ANKENÆVNEN:

Klageren anfører følgende:

"Partially unable to demonstrate a ticket. We were in Copenhagen as tourists where my fellow tourist bought 2 Metro tickets. We showed the receipt and my fellow tourist was also able to show his ticket. When checked, it turned out that I had lost my ticket while changing from M1 to M2. On this basis, I was fined DKK750.

The inspector (ID21XX) indicated to contact customer service. Here explained the story, but was left with the fact that they do not accept unnamed tickets and proof of payment, I felt I was discriminated against in this. After all, tourists can never present a personalised ticket.

Given the proofs of payment we showed and also my fellow tourist's valid ticket, I believe this is a special case.

I also explained to customer service that I also understand that these are the rules, but that this is an exceptional case in my opinion.

Customer service maintained its position and referred me to file the complaint with the board.

I hope the fine can be eliminated as there is evidence of the tickets purchased and it was not an intentional mistake on my part."

Indklagede anfører følgende:

"In the specific case, the complainant was met by our inspector September 13th, 2023, at 17:40 between Kastrup station and Copenhagen airport, where he could not present a valid ticket or travel document and due to this an inspection fee was issued in accordance with applicable rules.

The complainant told the inspector that he had lost his ticket.

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 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.

The above also appears from the [Joint National Travel Regulations](#), and is also stated on the information boards, which can be found at all metro stations.

When dealing with cards/tickets without name and/or photo, these are impersonal travel documents and therefore only valid when presented at the time of ticket control.

A day ticket is an impersonal travel document and only valid for the person who presents it to the staff at the time of inspection.

Whoever may have bought and/or paid for the ticket is therefore irrelevant.

Because this kind of ticket can be used by anyone, a presentation of the purchase or a receipt/account statement will not result in neither complete write-off nor reduction of the fare evasion ticket.

In the Joint National Travel Regulations at the bottom of section **2.6 Inspection of travel documents** flowing is stated:

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.

and furthermore, in section **2.7.1. Inspection of travel document:**

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.

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

It is of course a very unfortunate situation, but as we want to treat all customers equally, we do not take into account whether a customer has acted in good or bad faith, or whether the customer may be a tourist, child, student or pensioner. We only relate to the fact that the customer must have a valid ticket before entering the metro and be able to present this upon request at any time during the journey - if this is not the case, it must be accepted that an inspection fee is issued.

In conclusion we must refer to earlier decisions made by the Appeal Board in similar cases, where the complainants were unable to show an unpersonal ticket upon inspection but subsequently presented a receipt or an account statement from the bank for the purchase, and in those cases the traffic companies were entitled to uphold their claims.”

Hertil har klageren svaret:

“I must say that I am very disappointed in the way this is being handled and I still stand by my story that there was no, see also the evidence, intention involved.

What are my steps if I want to pursue the proceedings further.

As also explained earlier to the service desk, in my view this is a degree of discrimination.

I also repeat here that I understand very well that there are rules and that they apply to everyone, however, there are also exceptions to the rules, of which I think this story is an example of an exception to the rule.”

Metro Service har anført afsluttende:

“As written in our earlier answer we relates to the [Joint National Travel Regulations](#) where it is stated, that in case a customer cannot present a valid ticket upon inspection an inspection fee must be accepted and paid. I am not sure how the complainant can find this as a degree of discrimination – the same rules apply to everyone. We have no further comments.”

På ankenævnets vegne



Lone Bach Nielsen
Nævnensformand