

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer:	24-0093
Klageren:	XX 2300 Kbh. S
Indklagede:	Metroselskabet I/S v/Metro Service A/S
CVR-nummer:	21 26 38 34
Klagen vedrører:	Kontrolafgift på 750 kr. grundet udløbet pendlerkort
Parternes krav:	Klageren ønsker, at ankenævnet annullerer kontrolafgiften, og gør gældende, at det skyldtes en stresset nødsituation, at hun glemte, at hendes pendlerkort var udløbet Indklagede fastholder kontrolafgiften
Ankenævnets sammensætning:	Nævnformand Lone Bach Nielsen Vibeke Myrtue Jensen Torben Steenberg Helle Berg Johansen Dorte Lundqvist Bang

Ankenævnet for Bus, Tog og Metro har på sit møde den 19. juni 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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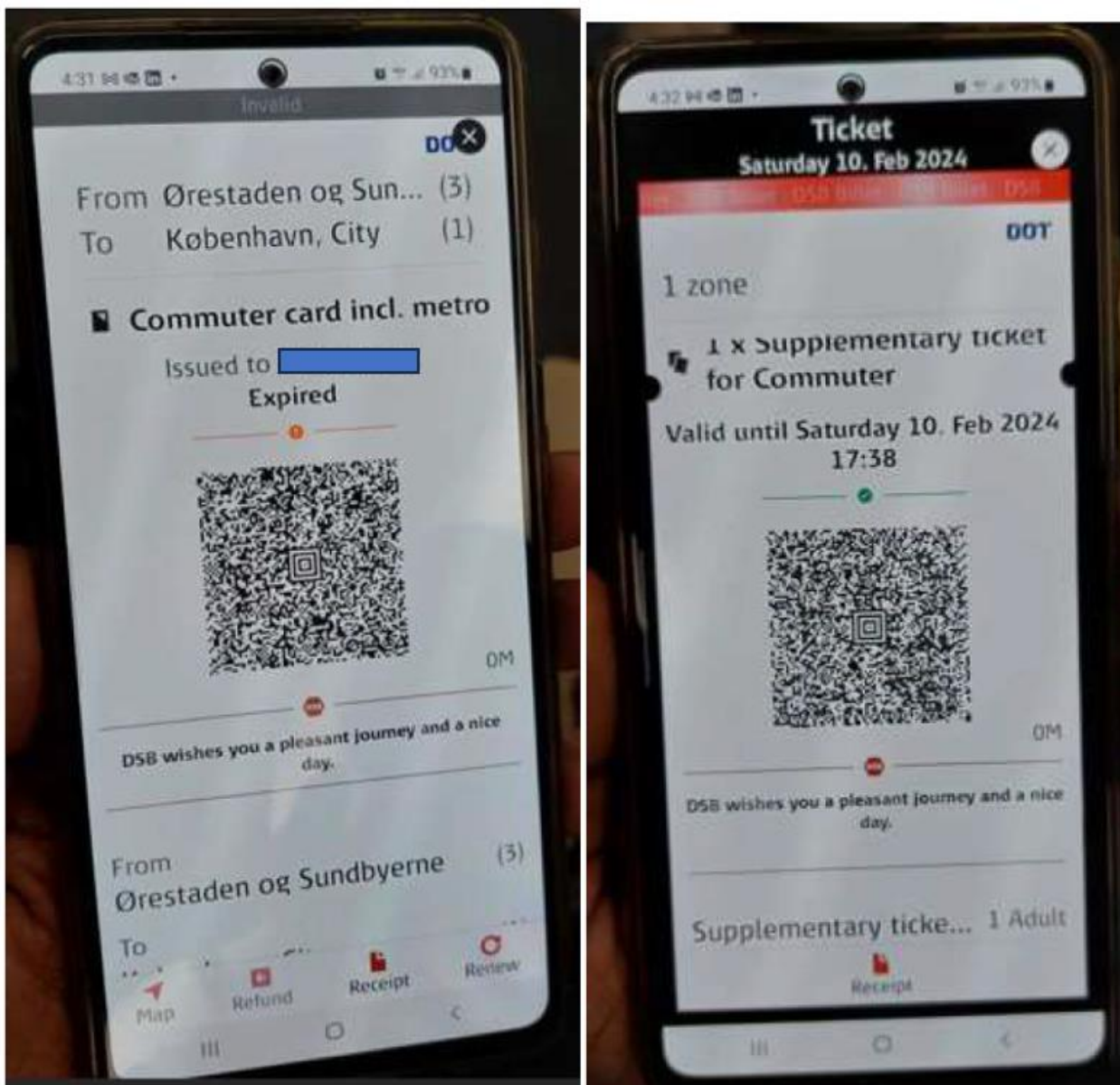
Hver af parterne kan anlægge sag ved domstolene om de forhold, som klagen har vedrørt.

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:

Ifølge klageren køber hun normalt pendlerkort til zone 01 og 03, når hun rejser, men den 10. februar 2024 skulle hun pludseligt til Indien, fordi der var opstået en nødsituation i hendes familie. Da hun var klar over, at hun havde brug for zone 04 for at komme til lufthavnen i tillæg til pendlerkortet, købte hun en tilkøbszone i DSB-appen. Imidlertid var hendes pendlerkort udløbet samme dag, hvilket hun ikke var opmærksom på grundet omstændighederne ved, at hun så pludseligt skulle rejse og efterlade sin datter.

Klageren rejste med Metroen mod lufthavnen, hvor hun ved kontrol foreviste det udløbne pendlerkort og tilkøbsbillet, som stewarden fotograferede. Da tilkøbsbilletten ikke var gyldig alene, idet der som minimum skal købes billet til 2 zoner for, at billetten kan være gyldig i sig selv, blev klageren pålagt en kontrolafgift på 750 kr.



Dette klagede hun over til Metro Service, idet hun gjorde gældende som refereret ovenfor.

Metro Service fastholdt kontrolafgiften og begrundede det således:

”

When met with ticket inspection in the metro, you presented an extension ticket, which is only valid when combined with a valid ticket or travel card. As you presented the extension ticket by itself, the inspection fee was issued correctly.

Like all other means of public transportation in the greater Copenhagen area, the Copenhagen Metro employs a self-service system, and it is your responsibility to ensure that your ticket is correct and valid for your journey. Furthermore, you must be able to show the ticket in case of a ticket inspection.

As your commuter pass was expired, the extension ticket was not valid for your trip to the airport. 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.

Considering this, you will be charged the full amount of the inspection fee, which we request that you pay as soon as possible.

”

Herefter indbragte klageren sagen for ankenævnet.

ANKENÆVNETS BEGRUNDELSE FOR AFGØRELSEN:

Når man rejser med pendlerkort, vil kortet vise, hvor mange dage, det er gyldigt, og tælle ned hver dag. Når kortet er udløbet, ser det ud, som vist på klagerens telefon, hvor der både står ”invalid [ugyldigt] og Expired [udløbet].

Da en tilkøbsbillet er gyldig som enten Metrotillæg eller som en ekstra zone i forlængelse af et pendlerkorts zoner, men ikke er en gyldig billet i sig selv, og da klagerens pendlerkort var udløbet den 10. februar 2024, blev kontrolafgiften for manglende gyldig rejsehjemmel pålagt med rette.

Det er ikke en betingelse for at pålægge en kontrolafgift, at passageren har handlet bevidst, og grundet den store risiko for omgåelse af reglerne om, at passageren skal betale fuld pris for rejsen, finder ankenævnet, at der ikke har foreligget sådanne særlige omstændigheder, at kontrolafgiften skal frafaldes.

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 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 følgende:

" I had to travel to India on a personal emergency, so I took the Metro to Airport on 10 February 2024. Unfortunately, without realizing that my commuter pass expired on same day, I had purchased extension ticket. This is not an intentional mistake for which I was charged with a penalty fee of 750DKK. For the past 4 years, I have been regularly renewing my commuter pass without fail. My request to waive off this fee was rejected in spite of me explaining clearly on my personal emergency situation and the mental stress I had been in. Adding on the above mentioned, I am also suffering with a poor eyesight due to Cone dystrophy which would have also caused me to not to notice the expiry of commuter pass.

Ønsker at opnå: Considering my mental and health condition, I would request to waive off my penalty fee.

Thanks for sharing the response. I totally respect the rules mentioned. However, it is unfortunate to hear that there are no considerations on commuter situation or record.

We don't have any system at stations to allow commuters only after valid ticket to start the journey. But at least the mobile app should not allow to purchase any extension ticket if no valid ticket is there in first place. I would have not ended up in this situation if either of the controls were in place.

I still would appeal to waive off my inspection fee."

Indklagede anfører følgende:

" In the specific case, the complainant was met by our inspector February 10, 2024, at 16:36 between Femøren station and Airport station. The complainant presented an expired commuter card and a supplementary ticket. Since a supplementary ticket alone is not a valid travel document, an inspection fee was issued 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 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 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 \(rejsekort.dk\)](http://Joint-National-Travel-Regulations.ashx (rejsekort.dk)) where we draw attention to section 2.4.1.:

2.4.1. Use of single tickets and cards issued on cardboard, paper or via mobile phone

It is the customer's responsibility to ensure that cardboard or paper single tickets (e.g. the Pensioner's card) are correctly issued and are valid for the entire journey and the area of travel.

Single tickets or cards are valid for the period and on the line and in the transfer area or the number of zones printed on the single ticket or card.

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Single tickets and mobile multi-trip cards must also be valid in the furthest (most expensive) zone that the journey passes through.

Commuter cards and season tickets are valid for the period that is printed on them. Commuter cards and season tickets must be valid for all the zones that the journey passes through. The text on a Commuter card valid in zones 1-4 in DOT will state whether the pass is valid on the metro or not. Any customer travelling on the metro with a Commuter card not valid for the metro does not have a valid travel document.

As the customer service employee also expressed in her reply, we fully understand that it is a really unfortunate situation that the complainant has found herself in, but as we want to treat our customers equally in connection with all case processing, we cannot take into consideration whether the customer acted in good or bad faith, i.e. whether it is a conscious or unconscious act, whether the customer has previously received an inspection fee or has been a user of public transport for many years. Thus, worries, stress and poor eyesight cannot cause a cancellation of an inspection fee which has been imposed correctly according to current regulations and we therefore maintain the demand for payment of inspection fee no 117(XXX) of DKK 750."

Og videre:

"As previously explained, public transport in Denmark is based on a self-service system and it is the sole responsibility of the passengers to have a valid travel permit before the journey starts.

If we understand the complainant's comment correctly, then she is of the opinion that the app should NOT at all allow her to buy an extension ticket without her having a valid travel permit beforehand.

Such a feature would require the app to know each and every passenger's cards and tickets, which is obviously not an option as cards and tickets exist in many different versions, both digital and physical. We maintain that the inspection fee was issued on a correct basis and maintain our demand for payment of the same."

På ankenævnets vegne



Lone Bach Nielsen
Nævnetsformand