

## AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2019-0012
- Klageren:** XX  
England
- Indklagede:** Metroselskabet I/S v/Metro Service A/S  
**CVRnummer:** 21268489
- Klagen vedrører:** Kontrolafgift på 750 kr. ved manglende check ind af flere rejsende på rejsekort anonymt grundet for lav saldo
- Parternes krav:** Klageren ønsker, at ankenævnet annullerer kontrolafgiften, da han er sikker på at have checket to rejsende ind, samt da han var kortholder og derfor ikke skulle have været pålagt kontrolafgiften  
Indklagede fastholder, at kontrolafgiften er udstedt retmæssigt til klageren
- Ankenævnets sammensætning:** Nævnensformand, landsdommer Tine Vuust  
Rasmus Markussen (2 stemmer)  
Asra Stinus  
Helle Berg Johansen

Ankenævnet for Bus, Tog og Metro har på sit møde den 8. maj 2019 truffet følgende

### **AFGØRELSE:**

Metro Service er berettiget til at opretholde kravet om klagerens betaling af kontrolafgiften på 750 kr.

Klageren skal betale beløbet til Metro Service, som 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](http://www.domstol.dk), [www.advokatnoeglen.dk](http://www.advokatnoeglen.dk) og /eller eget forsikringssselskab om eventuel forsikringsretshjælp.

## **SAGENS OMSTÆNDIGHEDER:**

Klageren rejste med en ven med metroen den 14. december 2018. Ifølge klageren anvendte han et rejsekort anonymt til korrekt check ind af dem begge, hvorefter de steg om bord. Ved efterfølgende kontrol, viste det sig imidlertid, at der kun var checket een voksen ind, og at saldoen var for lav til check ind af flere. Der kræves minimum 70 kr. per rejsende, og saldoen udgjorde 126 kr.

Da stewarden skulle udstede en kontrolafgift, truede han ifølge klageren med at tilkalde politiet, hvis ikke klageren, som var den eneste med ID-papirer, påtog sig kontrolafgiften. Klageren har oplyst, at han var af den opfattelse, at det ville være en god ide med politiets mellemkomst og foreslog dette til stewarden. Herefter oplyste stewarden, at politiet blot ville spærre ham inde, og klageren følte sig derfor tvunget til at acceptere kontrolafgiften og at underskrive kvitteringen for modtagelsen.

Ved den efterfølgende klage til Metro Service gjorde klageren gældende som ovenfor, samt at standen måtte have været fejlbehæftet. Han henviste til, at det fremgik af korthistorikken, at han ofte checkede flere ind på kortet, hvorfor han var bekendt med, hvordan man gjorde det korrekt. Han havde desuden vist stewarden, hvordan han havde anvendt standen til ekstra check ind, og stewarden havde bekræftet, at han havde gjort det korrekt.

Metro Service fastholdt kontrolafgiften med henvisning til, at det ikke var muligt grundet lav saldo at checke to rejsende ind, hvilket da heller ikke var sket ifølge korthistorikken.

Under den efterfølgende ankenævns sag har Metro Service indsendt logs, der viser, at standen fungerede, og at + knappen til ekstra check ind ikke var aktiveret, inden klageren checkede rejsekortet ind. Metro Service har videre oplyst, at det er korrekt, at politiet ikke tager stilling til selve kontrolafgiften, men kun sørger for at identificere personen, hvis de tilkaldes. Der er ikke tale om en trussel, men om en oplysning i overensstemmelse med de landsdækkende rejseregler, hvorefter der er en pligt til at identificere sig.

## **ANKENÆVNETS BEGRUNDELSE:**

Ankenævnet har tidligere til baggrund anmodet Rejsekort A/S om at få nærmere oplysninger om procesforløbet/transaktionen mellem standen og rejsekort, når kortet føres forbi standen, og til standens display viser teksten "OK god rejse". Ankenævnet har endvidere spurgt, om der foreligger undersøgelser eller oplysninger fra andre, der kan verificere Rejsekort A/S' udsagn om, at det hidtil ikke er forekommet, at rejsekort er checket korrekt ind, uden af dette er noteret på rejsekortet.

Ankenævnet har fra indklagede selskab modtaget oplysninger fra Back Office om denne sags konkrete rejse, som bekræfter oplysningerne på klagerens rejsekort om, at der ikke var checket to voksne ind på det anonyme rejsekort, og at saldoen på 126 kr. i øvrigt var for lav dertil, idet der kræves minimum 140 kr.

På baggrund af det anførte, har ankenævnet ikke grundlag for at konstatere, at klageren havde checket to rejsende korrekt ind på den pågældende rejse, hvor kontrollen foregik.

Det fremgår af rejsekort rejseregler, at rejsekort skal checkes ind ved rejsens begyndelse, og at det er passagerens eget ansvar at være checket korrekt ind.

Kontrolafgiften for manglende check-ind blev derfor pålagt med rette. Spørgsmålet er herefter om det var berettiget, at kontrolafgiften blev udstedt til klageren.

Når der rejses på et rejsekort anonymt, kan dette anvendes som gyldig rejsehjemmel for den pasager, der opfylder pågældende passagertype (voksen, barn, hund, cykel).

I nærværende sag, hvor der under billetteringen af to personer, som rejste sammen, blev fremvist et upersonligt rejsekort gyldigt for én rejsende, og hvor klageren foreviste sit sundhedskort til identifikation samt udfyldte og underskrev kvitteringen for modtagelsen af kontrolafgiften, anses kontrolafgiften for korrekt udstedt til ham.

Metro Service bør sikre, at kontrolpersonalet på en professionel måde giver informationen om, at politiet kan tilkaldes til identifikationen. Det fremgår af rejsereglerne, at dette kan ske, hvis kontrolpersonalet finder det fornødent. Ankenævnet finder det derfor ikke kritisabelt, at politiet ikke blev tilkaldt på klagerens anmodning.

Ankenævnet lægger til grund, at der må være tale om en misforståelse, når klageren havde fået den opfattelse, at politiet ville spærre ham inde: "lock you up" contra "look you up".

## **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. Af § 14 stk. 1, fremgår jernbanevirksomhedernes adgang til at opkræve kontrolafgift og ekspeditionsgebyr for passagerer, der ikke foreviser gyldig rejsehjemmel (billetter og kort). Jf. § 14 stk. 4, fastsætter transportministeren nærmere regler om jernbanevirksomhedens adgang til at opkræve kontrolafgift og ekspeditionsgebyr, jf. stk. 1.

I henhold til § 4 i bekendtgørelse nr. 1132 om kontrolafgifter af 08. september 2010, fastsætter jernbanevirksomheden bestemmelser om kontrolafgift i forretningsbetingelserne.

I de fælles landsdækkende rejseregler er der hjemmel til at udstede kontrolafgifter. Det anføres bl.a., at passagerer, der ikke på forlangende viser gyldig billet eller kort, herunder korrekt indchecket rejsekort, skal betale en kontrolafgift på 750 kr. Passageren skal legitimere sig ved kørekort eller andet retsgyldigt dokument. Passageren skal på forlangende kvittere for modtagelse af kontrolafgift, hvoraf fremgår navn, adresse, fødselsdato og underskrift. Der kan foretages opslag i CPR-registeret til identifikation eller kontrol af passagerens oplysninger. Passageren skal ved sin underskrift bekræfte rigtigheden af de angivne oplysninger, hvor det er påkrævet. Politiet kan medvirke eller tilkaldes under kontrollen, hvis kontrolpersonalet skønner det nødvendigt.

## **PARTERNES ARGUMENTER OVER FOR ANKENÆVNEN:**

### **Klageren anfører følgende:**

"I've received a fine for not tapping in an additional person. This is undeserved as I definitely tapped in for two people- if you view my transactions I had constantly tapped for two people when I was travelling with my friend ( please see card history).

Further evidence of this is the fact that I had tapped in when he checked my card- so I had clearly used the machine rather than tried to cheat.

So when the inspector came I readily handed over my card, and explained for me and my friend. However, to my surprise he said only one was present.

I was the card holder, and my friend did not have ID on him- so the inspector suggested I provide my details to avoid police intervention.

I thought explaining my situation to the police would be the best option, as the inspector didn't seem to care about what we said, so I encouraged him to do so. However the inspector replied that ' they won't speak to you they will just lock you up'.

I feel that this threat was incredibly unprofessional, especially when we were cooperating as we had actually tapped- and if true this represents a greater problem.

Nevertheless, I am certain I had selected the option for two- as I previously had done on many occasions. I even demonstrated how I had tapped in, and the inspector and he agreed it was correct way. This leads me to believe there was an issue with the machine I used- as this has previously never been a problem.

I am genuinely unsure as to why the check in did not work for two, and if it is a mistake on my part it was a sincere accident.

During my time in Copenhagen I have never received a ticket and constantly used commuter cards ( please find receipts attached). For further evidence please look at the card history and it should show multiple tap ins.

The inspector would even confirm that the card had been tapped in.

In summary, I understand the job of the inspectors, but this time I feel I was unfairly awarded a fine. If this fine was justly deserved, it does not justify the inspectors conduct and the fine should not be directed at me, as the travel card holder. Please review this email and look at any evidence e.g. video recording ( Friday 14th at around 21:15).

Also please find attached evidence of my precious commuter cards."

### **Indklagede anfører følgende:**

"Like all other means of public transportation in the greater Copenhagen area, the Copenhagen Metro employs a self-service system, where the passenger is responsible for being in possession of a valid ticket, for the entire journey, before boarding the train. Passengers must be able to present a valid ticket on demand to the ticket inspectors.

In cases where passengers are not able to present a valid ticket, a fare evasion ticket will be issued, which is currently DKK 750, - for adults. This basic rule is a prerequisite for the self-service system that applies to travel by public transport. The above mentioned information is available on [www.m.dk](http://www.m.dk) and on Din Offentlige Transport - <https://www.rejekort.dk/~media/rejekort/pdf/flr/faelles-landsdaekkende-rejseregler.pdf> as well as on our information boards which are placed at every station. The information boards contain travel information in both English and Danish.

Our Metro staff is trained to issue fare evasion tickets to all customers without a valid ticket. They do not distinguish between an intentional or unintentional mistake. They only check the validity of the ticket. In order to ensure correct travel information passengers should contact our Metro staff either in person or via call points on the station or in the Metro trains.

Call points can be found on all of our ticket vending machines, as well as yellow call points in several other places in every one of our stations. These call points can be used if the passenger requires assistance or guidance. The call point will connect the passenger directly to an operator in our control tower, which is manned 24 hours a day.

In the case in question, the complainant and his friend was met by a steward inspecting tickets on the 14<sup>th</sup> of December 2018 at 21:24 between Lindevang station and Vanløse station. The two friends presented a rejsekort of the type Anonymous. As only one (1) person was checked in on the card a fare evasion ticket was issued to one of the two persons according to the travel regulations.

When using an Anonymous rejsekort, the balance on the card must be at least 70 kroner in order to check in one adult person. If two adults travels together, the balance must be at least 140 kroner.

In the specific case, the balance on the card was just 126,00 kroner, which allowed only to check in one person. Thus, it has not been possible to check in two adults on the card.

See attached "Rejsehistorik" (travel history).

We can confirm that the card has previously been used to perform correct check-ins of several passengers. At the attached "Rejsehistorik" we have framed 2 previous actions with correct check in of more than one passenger. We have also attached a pdf file with "Transaktionsdetaljer" (transaction details).

On "Rejsehistorik" we have framed the correct check-in from December 13 at. 11:14 (Airport station). As you can see, the check-in of more than one passenger was started by activating the "extra" button on the card reader, which is seen in the history as a line with 0.00 followed by a line with a prepayment of 140, - kroner.

Saldo	E-pung ændring	Transakt.beleb	Forudbetaling	Gå t
147,00	100,00	100,00		<a href="#">Detaljer</a>
147,00	0,00	0,00	0,00	<a href="#">Detaljer</a>
7,00	-140,00	140,00	140,00	<a href="#">Detaljer</a>

On "Transaktionsdetaljer" one can see that 2 adults are registered on the card and one can also see in the red framing that a "Midlertidig ændring" (temporary change) has been made on the card, namely a "Midlertidig gruppe" (temporary group).

Landekode kort	208
Lokal / Over Storebælt	False
Medarbejder ID	
Medarbejdertype	Nul (type udefineret)
Midlertidig ændring	Midlertidig gruppe
Midterzone radius nr.	
Ny saldo på rejsekort	147
Opdelt rejse	False

If you then compare to the check-in on December 14 at. 21:04 (DR Byen station), you can - besides seeing that the balance on the card was not sufficient to check in 2 adults - also see that the check-in was not started by activating the "extra" button, because "Rejsehistorik" does not have the initial line with 0.00.

EasyTrip	126,00	58,00	-58,00	70,00	<a href="#">Detaljer</a>
EasyTrip	56,00	-70,00	70,00	70,00	<a href="#">Detaljer</a>

When you then look at "Transaktionsdetaljer" for the specific check-in, it is confirmed that only one (1) person has been checked in and that the electronic change from "Midlertidig ændring" (temporary change) to "Midlertidig gruppe" has not been made (temporary group), due to that the "extra" button on the card reader has not been activated.

Medarbejdertype	Nul (type udefineret)
Midlertidig ændring	
Midterzone radius nr.	
Ny saldo på rejsekort	56

As can be seen from the attached pdf file "Udstyrshistorik" (equipment history), the card reader has worked flawlessly with other check-in extra actions performed by other passengers who have activated the "extra" button and who have had sufficient balance on the card.

In the specific situation, an impersonal rejsekort was presented, namely an anonymous card. Since only one (1) person was checked in on the card, one of the two (2) travelers had to receive a fare evasion ticket. It is true that you have an obligation to show identification when you get a fare evasion ticket, and if this is not possible, the police can be summoned to make identification.

The steward's explanation to the complainant and his friend that the police cannot/will not listen to arguments for why no valid ticket can be presented is in accordance with the truth. If the police are called to help with identification, this is also the only thing the police will do. It is not a threat, but rather in accordance with the Common Travel Rules, and is intended, in particular, to ensure that the name and address etc. information provided by a passenger upon receipt of a fare evasion ticket is correct and not an attempt abuse of someone else's identity. If the passenger wishes to complain about the fare evasion ticket, he/she is welcome to contact the customer service department in writing.

Since an anonymous rejsekort can belong to anyone, in a situation such as the specific, the rejsekort in and of itself cannot be used to determine to whom a fare evasion ticket is issued. In the specific case, the complainant got the fare evasion ticket, but we must emphasize that it is not something he has been forced to. He himself has given his name and address and signed for receiving the fare evasion ticket.

We sincerely would like to apologize if the complainant and his friend felt ill-treated by the steward because it is certainly not the intention. A steward, however, does not have a mandate to carry out any kind of case processing, but must only relate to whether a valid ticket can be presented and if not, then issue a fare evasion ticket and kindly inform how to complaint about it if wanted.

Since there was insufficient balance on the rejsekort to carry out check-in of 2 adult passengers and since the transaction details show that the "extra" button on the card reader was not activated, we must refuse that the equipment has been faulty why we maintain our claim for payment of check fee 007xxxx of 750 kroner."

På ankenævnets vegne



Tine Vuust  
Nævnshoved