

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2019-0092
- Klageren:** XX
Alpharetta, USA
- Indklagede:** Metroselskabet I/S v/Metro Service A/S
CVRnummer: 21 26 38 34
- Klagen vedrører:** Kontrolafgift på 750 kr. grundet udløbet billet – klageren kom ved en fejl til at smide den netop købte billet ud i stedet for en gammel billet fra en tidligere kunde, som også lå i billetautomatens bakke
- Parternes krav:** Klageren ønsker, at ankenævnet annullerer kontrolafgiften og gør gældende, at han via den indsendte bankudskrift har dokumenteret, at han på Fasanvej st. købte en billet til rejsen.
- Indklagede fastholder kontrolafgiften
- Ankenævnets sammensætning:** Nævnensformand, landsdommer Tine Vuust
Rasmus Markussen
Torben Steenberg
Asra Stinus
Helle Berg Johansen

Ankenævnet for Bus, Tog og Metro har på sit møde den 19. juni 2019 truffet følgende

AFGØRELSE:

Metroselskabet I/S v/Metro Service A/S er berettiget til at opretholde kravet om betaling af kontrolafgiften på 750 kr.

Beløbet skal betales til Metroselskabet I/S v/Metro Service A/S, som 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, som er bosat i USA og var turist i Danmark, rejste den 28. februar 2019 om formiddagen med Metroen fra Fasanvejen st. til Lufthavnen st., hvorfra han skulle rejse videre med fly. Efter Lergravsparken st. var der kontrol, og da klageren ikke kunne finde den billet, som han havde købt i billetautomaten på Fasanvejen st., men kun kunne fremvise en udløbet billet fra den forrige aften, blev han kl. 11:30 pålagt en kontrolafgift på 750 kr. for ikke at kunne forevise gyldig rejsehjemmel.

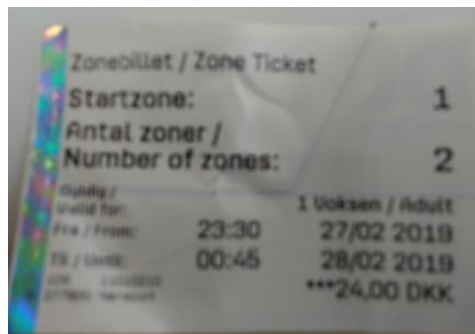


Foto fra stewardens PDA af den udløbne billet

Klageren har oplyst, at han på Fasanvejen st. sammen med den billet, som han købte, medtog en gammel billet, som lå i billetautomatens bakke, og at han ved en fejl måtte have forbyttet de to billetter og smidt den nye ud i stedet for den gamle.

Ved en efterfølgende klage anmodede han Metro Service om at frafalde kontrolafgiften. Han medsendte et bankudskrift, som viste, at hans konto den 28. februar 2019 var debiteret 5,51 \$ for et køb foretaget på Fasanvej st., og anførte endvidere som angivet oven for.

Metro Service fastholdt den 5. marts 2019 kontrolafgiften med henvisning til selvbetjeningsprincippet, og til at klageren ikke kunne forevise gyldig rejsehjemmel ved kontrollen. De anførte, at efterfølgende indsendelse af bankudskrift ikke kunne accepteres for upersonlige billetter uden navn og foto, og at upersonlige billetter kun er gyldige ved forevisning ved selve kontrollen.

ANKENÆVNETS BEGRUNDELSE:

Klageren kunne ved kontrollen den 28. februar 2019 ikke forevise gyldig billet, fordi han efter det oplyste ved en fejl var kommet til at smide sin gyldige billet ud i stedet for en gammel billet, som var udløbet om natten kl. 00:45, hvilket var det eneste, han kunne forevise. Kontrolafgiften blev derfor pålagt med rette.

Ankenævnet bemærker, at det efter ankenævnets faste praksis ikke har betydning, om der fremlægges bankudskrift fra billetkøbet, idet upersonlige billetter skal kunne forevises ved kontrollen.

Det af klageren anførte om, at luftfartsselskaber accepterer forevisning af debet- og kreditkort som dokumentation for købte flybilletter, kan ikke føre til et andet resultat, da der er tale om en helt anden type billet, som endvidere er personlig, i modsætning til den upersonlige kontantbillet, som klageren har oplyst, at han købte.

Det bemærkes, at pligten til at betale kontrolafgiften ikke er betinget af, om passageren har betalt

for rejsen. Dette er et område med stor mulighed for omgåelse af reglerne om at kunne forevise gyldig billet, hvis det accepteres, at passageren efterfølgende kan indsende et bankudskrift. Efter ankenævnets faste praksis kan det indsendte bankudskrift derfor ikke medtages i bedømmelsen af, om klageren foreviste gyldig rejsehjemmel ved kontrollen.

På den baggrund finder ankenævnet, at der ikke har foreligget sådanne særlige omstændigheder, at klageren skal fritages for kontrolafgiften.

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, som trafikvirksomhederne har vedtaget pr. 1. marts 2018 og opdateret 1. november 2018, fremgår 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 ANKENÆVNET:

Klageren anfører følgende:

" In our digital age, Metro's insistence that only a physical paper ticket presented on demand and onboard a train is antiquated, unreasonable, lacks basic customer service, and is an insult to a passenger who has lost a ticket.

To prove my point as a traveler to Copenhagen Airport on this particular trip, airlines have for years allowed passengers to travel paperless, need only a charge card number as proof of ticket purchase, and accept many other ways to reissue a lost ticket or boarding pass.

Metro's refusal to accept as proof of purchase a credit card transaction about 20 minutes before being approached by a train steward, together with your possession of an image of my passport with name that matches the credit card, is absurd. How can the purchaser of the train ticket possibly be someone other than me? No, my credit card has not been stolen, and, yes, it is still in my possession.

The steward's suggestion that I could have bought a ticket and given it to someone else is equally absurd. Why would I do that and expose myself to a 750 kroner penalty?

Let me also point out that not only I have record of my ticket purchase. The purchase was made at a Fasanvej Station ticket machine owned and operated by Metro, so Metro has the same information about the

purchase as the issuer of my credit card and I have.

In your e-mail reply you write that “a ticket is not personalized with a name or photograph, and as such we cannot accept subsequent presentation of these” (my underlining). Then why ask for personal identification - the train steward suggested my passport, which I showed him and he took a picture of it - when an evasion ticket is issued?

By accepting my passport as personal identification you cannot disassociate me from my ticket purchase minutes earlier, from a ticket machine owned and operated by Metro, using a credit card bearing my name and in my possession.

Morally, how can you refuse to accept my passport with name and picture to prove my identity, yet advance your charge against me with my passport as identification?

Your decision is clearly taken as an easy and convenient way out and from lack of willingness to resolve the matter in an amicable and customer friendly manner. Is that the most friendliness Copenhagen and Denmark can offer their visiting tourists?”

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.

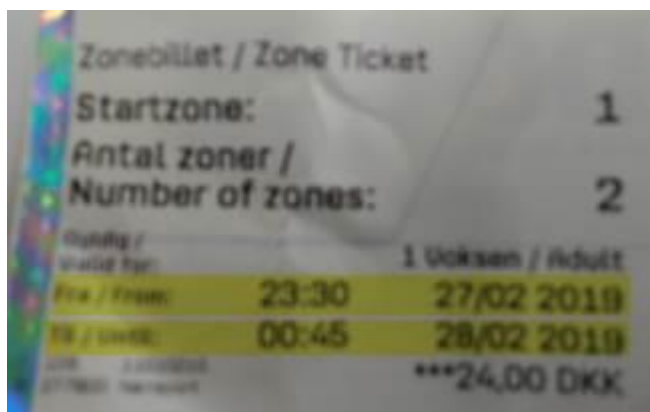
In cases where passengers are not able to present a valid ticket, a fare evasion ticket will be issued, which is currently DKK 750, - for adults. This basic rule is a prerequisite for the self-service system that applies to travel by public transport. The above mentioned information is available on www.m.dk, <https://dinoffentligetransport.dk/service/for-tourists/>, <https://www.rejsekort.dk/~media/rejsekort/pdf/flr/jointnationaltravelregulations.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.

Furthermore there are stickers at all platform screen doors in the metro where the customers are advised not to boarder without a valid ticket and the consequence if doing so:



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, or what might be the reason for lack of a valid ticket. They only check the validity of the ticket the customer presents.

In this case the complainant presented an expired ticket which is evident from the picture the steward took at the time of inspection (we apologize for the quality of the picture):



The ticket above is valid from February 27th, 2019 - 23:30/11:30 pm until February 28th, 2019 – 00:45/00:45 am. The complainant was checked February 28th, 2019 shortly after 11:00 am and the fare evasion ticket was issued at 11:09 am.

When the steward issues fare evasion ticket the must always ensure that the person the fare evasion ticket is issued to is the person in front om them. This is why they asked for identification.

The complainant states that he inadvertently tossed away the ticket he had just purchased. A ticket is not personalized with a name or photograph, and as such we cannot accept subsequent presentation of these. Therefore, it is also not possible to have a fare evasion ticket annulled based on a receipt or bank statement. A ticket is only valid when presented by the ticket holder upon inspection.

We must point out that we do not take into consideration whether the lack of a valid ticket is due to a conscious or unconscious act. Since we want to treat all passengers equally, we only consider the fact that it is the customer's responsibility - before boarding the train - to secure a ticket, which can be presented on demand.

Based on the above and earlier correspondence we still find the fare evasion ticket correctly issued as the complainant could not show a valid ticket when asked for by the steward.

We therefore maintain our claim of DKK 750,-."

Hertil har klageren bemærket:

"Your answer suggests that I presented an expired ticket as proof of valid travel document. That is not correct. When asked by the steward to present a valid ticket, I tried to find my ticket purchased minutes earlier at Fasanvej Station. I couldn't find it and then realized that I had inadvertently tossed it after the purchase and having picked up another, old and expired ticket from the ticket machine basket.

I ask that you check the CCTV camera at Fasanvej Station for proof of my purchase with my Chase credit card. You have the relevant information to match the CCTV tape with both the ticket machine transaction and the picture in my passport."

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"You have not disputed that you sold me a ticket for travel the Airport Station - my credit card account was charged for the sale. The account is personal; it is in my name and not a corporate account (see attached account image). Another attachment with the image of the account statement with the ticket purchase at Fasanvej Station does not have my name on it; however, next to it is a purchase at London Heathrow Airport, which should be a strong indication that the statement is mine (I was traveling with Metro to the Airport Station, which suggests that I would travel to a place outside Copenhagen).

To prove that the statement pages belong to me and the same account, I will be glad to mail to you by regular mail paper printouts of the two pages.

I have in a separate e-mail asked that you obtain proof of my purchase from the CCTV camera at Fasanvej Station. It will show my purchase at the exact same time as your recorded transaction from Metro's ticket machine – possibly also that I tossed a ticket (the just purchased) into a trash bin. You will see a perfect match of the CCTV image and my passport photo in your file.

Your refusal so far to consider evidence of your ticket sale (CCTV images will add further evidence) is troubling. I understand that there are ticketing rules that you follow on a regular basis, but to dismiss proof of your sale in a not-so-normal situation – a sale you have not disputed and cannot dispute - because you do not have a procedure to collect and consider the proof defies common sense.

It is ironic that this incident happened on the way to Copenhagen Airport where airlines for more than a decade have accepted presentation of a credit or debit card as proof of ticket purchase. Metro dismisses this simple proof of purchase as irrelevant – even when there is doubt - because it is not part of “the system”.

Let me add that this case reflects very poorly on Copenhagen and Denmark that take great pride in welcoming and being hospitable to tourists. Is it normal to treat tourists as fare evaders and cheaters despite indisputable proof of ticket purchase? Don't you know warnings? Is there no leniency for first-time offenders? ”

Hertil har indklagede bemærket:

” The complainant is right so far that his account is personal and he might be able to present a transaction from Fasanvej station (as presented by picture in the mail) but this does not change the fact, that a ticket bought in one of our ticket vending machines is not personalized. The ticket is valid for the person who can present it in an inspection situation.

The complainant could not present a ticket when asked for by the ticket inspector and this is why a fare evasion ticket was issued.

We are not allowed to use video from CCTV cameras in our case handling.

As mentioned in our first reply the metro employs a self-service system, where the passenger is responsible for being in possession of a valid ticket, for entire journey, before boarding the train. Passengers must at all-time be able to present this valid ticket on demand to the ticket inspectors. In cases where a ticket cannot be presented to the ticket inspector an issued fare evasion ticket must be accepted.

We want to handle all customers equally and this is why we do not take into consideration what might have been the reason for a passenger not to be able to present a valid ticket, and we do not have such thing as a warning for first-time offenders.

Based on our mail of April 1st, 2019 and the above we still find the fare evasion ticket correctly issued as a valid ticket could not be presented on demand and we therefore maintain our claim of 750 DKK.”

På ankenævnets vegne



Tine Vuust
Nævnensformand