

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer:	2020-0219
Klageren:	XX 2300 København S
Indklagede:	DSB
CVR-nummer:	25 05 00 53
Klagen vedrører:	Kontrolafgift på 750 kr. grundet rejse uden billet – klageren mobilpendlerkort var udløbet 5 dage forinden
Parternes krav:	Klageren ønsker, at ankenævnet annullerer eller nedsætter kontrolafgiften, og gør gældende, at hun havde glemt at forny pendlerkortet, men fornyede det med det samme efter kontrollen Indklagede fastholder kontrolafgiften
Ankenævnets sammensætning:	Nævnensformand, landsdommer Tine Vuust Rasmus Markussen Torben Steenberg Helle Berg Johansen (2 stemmer)

Ankenævnet for Bus, Tog og Metro har på sit møde den 9. december 2020 truffet følgende

AFGØRELSE:

DSB er berettiget til at opretholde kravet om betaling af kontrolafgiften på 750 kr.

Beløbet skal betales til DSB, 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, www.advokatnoeglen.dk og /eller eget forsikringssselskab om eventuel forsikringsretshjælp.

SAGENS OMSTÆNDIGHEDER:

Klageren benytter normalt mobilperiodekort til at pendle mellem sin bopæl og sit arbejde.

Da hun om eftermiddagen den 6. oktober 2020 rejste med DSB S-tog fra Vangede st. til Østerport st., havde hun glemt at forny sit periodekort, som udløb om natten mellem den 30. september og den 1. oktober 2020. Hun blev derfor kl. 17:23 ved kontrol i S-toget pålagt en kontrolafgift på 750 kr. for at rejse uden gyldig rejsehjemmel.

Klageren fornyede umiddelbart efter kontrollen sit mobilperiodekort, som herefter var gyldigt fra den 6. oktober 2020 kl. 17:57.

Ordre- og billetdetaljer vedrørende klagerens nye periodekort:

Ordreinformation	Billetinformation
Billet information	
BILLETTYPE: Pendlerkort	PRIS: 540,00 kr.
STAMKORTNUMMER: <input type="text"/>	PASSAGERTYPE: Voksen
BILLETNUMMER: <input type="text"/>	STARTZONE: IKKE OPLYST
VARENUMMER: 540	SLUTZONE: IKKE OPLYST
BILLETSTATUS: Gyldig	ANTAL GYLDIGE ZONER: 3
BILLET GYLDIG FRA: 06 Okt 2020 - 17:57:26	GYLDIGE ZONER: 1001, 1002, 1031
BILLET GYLDIG TIL: 05 Nov 2020 - 03:59:59	

Klageren anmodede herefter DSB om at nedsætte kontrolafgiften med henvisning til, at hun er daglig pendler, og at hun havde fornyet kortet til at gælde fra den 6. oktober 2020, hvor kontrolafgiften blev udstedt.

DSB fastholdt den fulde kontrolafgift og oplyste, at de ikke havde mulighed for at nedsætte kontrolafgiften, selv om klageren efterfølgende havde fornyet sit pendlerkort, da hun ikke havde haft gyldig billet på kontroltidspunktet.

ANKENÆVNETS BEGRUNDELSE:

Ved kontrollen i S-toget den 6. oktober 2020 kl. 17:23 kunne klageren ikke forevise gyldig billet, fordi hun havde glemt at forny sit mobilperiodekort.

Kontrolafgiften på 750 kr. blev dermed pålagt med rette.

Det følger af de fælles landsdækkende rejseregler, at passagerer, der har et gyldigt personligt pendlerkort, men ikke kan forevise det ved kontrol, kan få kontrolafgiften nedsat til 125 kr. ved efterfølgende indsendelse til trafikselskabet.

Efter kontrollen købte klageren et nyt periodekort med gyldighed fra den 6. oktober 2020, men da kortet først blev købt kl. 17:57 *efter* kontrollen, var det ikke gyldigt, da kontrollen fandt sted kl. 17:23.

Ankenævnet finder herefter, at klageren ikke har været berettiget til at få kontrolafgiften nedsat til 125 kr.

Pligten til at betale kontrolafgift er ikke betinget af, om passageren bevidst har forsøgt at unddrage sig betaling for rejsen, og da dette er et område med oplagt mulighed for omgåelse af reglerne om at betale for hele sin rejse, finder ankenævnet, at der ikke har foreligget sådanne særlige omstændigheder, at kontrolafgiften skal frafalde eller nedsættes.

RETSGRUNDLAG:

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 28. september 2010, fastsætter jernbanevirksomheden bestemmelser om kontrolafgift i forretningsbetingelserne.

I de fælles landsdækkende rejseregler, 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 gælder også, hvis passageren har købt rejsehjemmel via en mobil enhed, der ikke kan kontrolleres, f.eks. hvis denne er løbet tør for strøm eller gået i stykker. Det er passagerens ansvar, at rejsehjemlen er endeligt modtaget på den mobile enhed før påstigning.

Fra de fælles landsdækkende rejseregler pkt. 2.7:

”

2.7.5. Pendlere

Kunder, der har et gyldigt personligt pendlerkort, men ikke kan forevise det ved kontrol, kan få kontrolafgiften nedskrevet til 125 DKK. Der kræves herfor at kopi af pendlerkortet/periodekortet eller rejsekortnummeret fremsendes til kundecenteret hos det selskab, som har udstedt kontrolafgiften senest 14 dage efter kontrolafgiftens udstedelse.

Kunder, der hos DSB er tilmeldt Glemte kort ordningen og ved kontrol i DSB's tog ikke kan forevise deres pendlerkort, kan endvidere ved at identificere sig med CPR-nummer rejse 6 gange pr. løbende år i pendlerkortets gyldighedsområde uden at skulle betale kontrolafgift.

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PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører følgende:

" I am writing regarding a response I have received from DSB to uphold a penalty fee which I have received because I have forgotten to renew my monthly card. Yes, it is my responsibility to renew it before travel, and yes, it is my fault for not doing so, and I understand being fined for this reason.

What I do not understand is why the amount should be 750 DKK and why it can not be reduced, when first, I have renewed my card after the event via DOT app (to continue travelling home) and that whole day (6th Oct) counts in the days the card is for, regardless the time it was issued. Secondly, I really think it is unfair being asked to pay such big amount, when every month I buy a card that costs me 950 DKK (I can attach the invoices if needed) and there was not even a possibility to be reimbursed for last one which I could not use due to COVID-19 regulations to work from home (DOT app just does not have this option). I am sorry to say, but I really feel robbed just because I chose to use public transport to go to work.

In case you wonder why I have not renewed my card few days earlier (as I usually do) to prevent all this from happening, it is because the company where I work at has moved to a new bigger office and therefore the zones I had to get a card for happened to be different.

Thank you for your time and for looking into my case, I really hope that the penalty of 750 DKK can be reduced to a reasonable amount."

Indklagede anfører følgende:

" DSB can inform that on 6 October 2020 at 17:23 a penalty fare was issued for the complainant – for a travel from Vangede to Østerport Station. The DSB employee has noted on the electronic penalty fare that nothing was presented at ticket control on board the train. The complainant has informed that she forgot to renew her Commuter Card.

As no valid ticket was presented upon inspection, DSB had a legitimate basis for issuing and maintaining a penalty fare. The penalty fare is issued in accordance with the applicable travel rules. The following is stated in the Joint National Travel Regulations of 1 January 2020:

2.3. Purchase of travel documents

To be able to travel by train, bus and metro, the customer must be in possession of a valid travel document.

Page 7 of 31 To be able to travel by bus, a single ticket can be purchased with cash on boarding the bus.

Certain bus lines may be exempt from this; see further information at www.dinoffentligetransport.dk.

driver is only obliged to accept cash up to the nearest hundred kroner. Tickets may only be purchased before boarding when travelling by DSB, Arriva and Nordjyske Jernbaner trains, by metro, by Nærumbanen, by Lokaltog Region Sjælland, by Vestbanen and by the Letbane light rail service in Aarhus. Tickets can be purchased after boarding in Lokaltog Region Hovedstaden (except for Nærumbanen). On the Lemvigbanen railway line and city buses in Aarhus there is self-ticketing.

There is a ticket machine in the train and bus. The ticket machine only takes coins, and the ticket must be purchased immediately upon boarding, before the customer sits down. Tickets can be purchased from vending machines at the stations of DSB, Arriva Tog, Nordjyske Jernbaner, the Letbane light rail service in Aarhus, and Metroselskabet. In addition, tickets can be purchased from vending machines at the larger stations of Lokaltog Region Sjælland and of Vestbanen.

Not all tickets and cards can be purchased from all vending machines. Vending machines take coins and/or debit cards. Travel documents can also be purchased from the companies' operated retail outlets during opening hours and via the companies' websites (see section 21). Most companies also offer travel documents via mobile devices (e.g. mobile phone, smartphone and tablet).

This service cannot be accessed from all telecommunications companies, and at certain locations and times not all of them have the necessary coverage. More information on how and where to purchase a travel document can be found on the companies' websites (see section 21).

2.4. Purchase of travel document

Upon receipt of a travel document, the customer must ensure that the ticket is correct for the required purpose.

The customer must have a valid travel document when boarding and ensure that the rejsekort has been checked in correctly. The customer can extend the journey by purchasing more zones for the ordinary travel document. The purchase must be made while the ordinary travel document is still valid.

The rules for purchase and use of a supplementary ticket adhere to the general rules for purchase of travel documents. The driver does not undertake systematic ticket inspection, but can give guidance at the customer's request. The travel document does not give access to a specific departure unless this is stated in the travel document, and seating is not guaranteed.

There can be special charges on certain buses and trains, for example night supplements. This will be shown on the timetables. If the travel document is valid for a specific period, which expires during the journey, the travel document will not be valid for further than the printed final destination.

However, a zone ticket for travel throughout the area of validity will be valid if the last boarding takes place within the ticket's period of validity. Information on special rules concerning time limits/restricted periods applying to travel Page 8 of 31 documents can be found on the companies' websites (see section 21).

Special rules apply to rejsekort (see www.rejsekort.dk/terms & conditions). For travel by city bus in the City of Aarhus and on using the Letbane light rail service in Aarhus, the customer must alight at the latest by the time stamped on the ticket (see www.midttrafik.dk). For journeys by metro, the customer must alight no later than 30 minutes after the expiry of the ticket's period of validity.

2.6. Inspection of travel documents

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

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

Mobile products must be presented to the inspection staff – either 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 tickets and cards are accepted as valid travel documents. Copies and images of tickets and cards (Print-Self 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 requests, cf. section 2.7.4. If a valid travel document cannot be presented on request, subsequent presentation will not be accepted, see section 2.7.5, however, concerning travelling without a Commuter Pass.

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.

A customer who uses a short-term card (such as a pensioner's card) outside the card's validity period, or if other means of transport or travel time restrictions are not respected (for example lack of supplement for DSB 1' or for the metro, or carrying bicycles outside the times when they are allowed to be taken) is also considered to be a customer without a valid travel document.

Customers travelling alone on someone else's personal rejsekort or under a customer category to which they are not entitled will be travelling without a valid travel document.

The card's owner must always be checked in on the rejsekort on journeys where a Rejsekort Personal is used. Furthermore, the rejsekort must not be so worn/covered that the name cannot be read.

2.7.2. Fees

The inspection fee is DKK 750 for adults and young persons and DKK 375 for children and dogs. For bicycles, the fee is DKK 100.

Inspection fees when travelling over the Øresund bridge with DSB can also be paid in SEK, in which case fees are SEK 1,000 (adults), SEK 450 (children and dogs) and SEK 150 (bicycles).

Customers who have checked in correctly at the start of the journey, but have not checked in the rejsekort on changing means of transport – and/or, when travelling on the metro, have not checked in at rejsekort stands belonging to the metro – will also be travelling without a valid travel document. In this situation the inspection fee is DKK 10.

Below is documentation for the purchase of Commuter Cards in September/October 2020 – made by the complainant. This shows that the complainant did not have a valid Commuter Card in the period 1 October - 6 October 2020. On 6 October at 17:57 the complainant bought a Commuter Card for the period 6 October - 5 November.

Since this Commuter Card was purchased after the issuance of the penalty fare, which was issued at 17:23, this is not a valid ticket for the journey made and cannot exempt the complainant from the penalty fare issued. To secure ticket revenue, a valid ticket must be purchased before boarding.

Ordre- og billetdetaljer

Se billetdetaljer samt kundeinformation på købstidpunktet. Refusion, gensendelse af kvittering samt annullering af den aktuelle billet er også muligt.

Ordreinformation

Billetinformation

Billet information

BILLETTYPE:
Pendlerkort

PRIS:
870,00 kr.

STAMKORTNUMMER:

PASSAGERTYPE:
Voksen

BILLETNUMMMER:

STARTZONE:
IKKE OPLYST

VARENUMMER:
540

SLUTZONE:
IKKE OPLYST

BILLETSTATUS:
Udløbet

ANTAL GYLDIGE ZONER:
5

BILLET GYLDIG FRA:
01 Sep 2020 - 05:39:45

GYLDIGE ZONER:
1001, 1002, 1003, 1030, 1041

BILLET GYLDIG TIL:
01 Okt 2020 - 03:59:59

Ordre- og billetdetaljer

Se billetdetaljer samt kundeinformation på købstidpunktet. Refusion, gensendelse af kvittering samt annullering af den aktuelle billet er også muligt.

Ordreinformation

Billetinformation

Billet information

BILLETTYPE:
Pendlerkort

PRIS:
540,00 kr.

STAMKORTNUMMER:

PASSAGERTYPE:
Voksen

BILLETNUMMMER:

STARTZONE:
IKKE OPLYST

VARENUMMER:
540

SLUTZONE:
IKKE OPLYST

BILLETSTATUS:
Gyldig

ANTAL GYLDIGE ZONER:
3

BILLET GYLDIG FRA:
06 Okt 2020 - 17:57:26

GYLDIGE ZONER:
1001, 1002, 1031

BILLET GYLDIG TIL:
05 Nov 2020 - 03:59:59

It appears from the Joint National Travel Regulations that adults who cannot present a valid ticket upon inspection are subject to receive a penalty fare of DKK 750. It is in accordance with this that DSB has maintained a claim for payment of DKK 750.

On behalf of the above, DSB cannot meet the demands of the complainant."

Hertil har klageren bemærket:

"I have read all attached documents, and really would like to hear what the Transport Company has to say about my case and therefore will not withdraw my request. This is, as I mentioned to the Ambassador, due to the following:

- I am not looking for a cancelation of the fine, but ask if it can be reduced.
- I am not arguing about the fact of not having a valid ticket during the check.
- I am aware that one card expired on the 1st October, and the new one was bought on the 6th, as DSB states, but as I explained to my letter to the Ambassador, this was due to the fact that the company where I work has moved to a new address, therefore the difference between the zones of the two cards and also the few days gap in between.

Indeed the time stamp of the commuter card issued on the 6th October can be used as a prove that at the time of the inspection I did not have a valid ticket (which I am not denying from the beginning), however this does not mean that the price of the card has changed. No, I did pay for the whole day when I bought it, and I bought it on that same day because I needed to continue travelling home to Amager.

The other reason why I ask for what reason it is impossible for the penalty to be reduced, when DOT hold my payment for commuter card Sept-Oct which I could not even use due to Covid-19 regulations to work from home, but still unable to be reimbursed for via the DOT app at that time.

Thank you for your time. I am looking forward to hearing from you and still hoping for the penalty to be reduced."

På ankenævnets vegne



Tine Vuust
Nævnensformand