

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer:	2022-0123
Klageren:	XX 2400 København NV
Indklagede: CVR-nummer:	Metroselskabet I/S v/Metro Service A/S 21 26 38 34
Klagen vedrører:	Kontrolafgift på 750 kr. grundet manglende check-ind på Rejsekort
Parternes krav:	Klageren ønsker, at ankenævnet annullerer kontrolafgiften, og gør gældende, at Rejsekortautomaten havde problemer med at modtage betaling, hvorfor det krævede fire forsøg at tanke op, og han nåede derfor ikke at checke ind
Ankenævnets sammensætning:	Indklagede fastholder kontrolafgiften Nævnshoved, landsdommer Tine Vuust Gry Middtun Torben Steenberg Helle Berg Johansen Anna Langskov Lorentzen

Ankenævnet for Bus, Tog og Metro har på sit møde den 12. september 2022 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:

Da klageren om morgenen den 28. maj 2022 skulle rejse med Metroen fra Nørrebro st. til Lufthavnen st., kunne han ikke checke sit Rejsekort Anonymt ind, fordi saldoen dagen forinden var kommet under minimumsbeløbet på 70 kr. og dermed var for lav til at checke ind.

Ifølge klageren havde han travlt, da han skulle nå et fly i lufthavnen, og Rejsekortautomaten ville først i fjerde forsøg tage imod betaling for en optankning på 100 kr. I det samme som transaktionen blev gennemført, ankom toget til perronen, og han skyndte sig at stige ombord.

Efter Metroens afgang fra Nørrebro st. var der kontrol af klagerens rejsehjemmel, og han foreviste sit Rejsekort. Imidlertid var Rejsekortet ikke checket ind, og han blev derfor pålagt en kontrolafgift på 750 kr.

Den 3. juni 2022 anmodede klageren Metro Service om at fratage kontrolafgiften og begrundede sin anmodning som anført ovenfor.

Metro Service fastholdt kontrolafgiften med henvisning til, at der ikke var registret et check ind på klagerens Rejsekort, hvorfor han ikke havde haft gyldig rejsehjemmel, samt at det ikke var muligt for Metro Service at medtage klagerens intentioner i deres bedømmelse heraf.

Fra klagerens rejsehistorik:

27-05-2022 13:14:51	Check ind	Check ind	3084:	439	166	Nørreport St.	VAL_53424 - 132AF8	EasyTrip	1,84
27-05-2022 13:28:09	Check ud	Check ud	3084:	440	166	Nørrebro St.	VAL_53430 - 134FC9	EasyTrip	55,14
28-05-2022 07:33:33	Tank-op	Tank-op	3084:	441		Nørrebro St.	MET_No_RVM_102 - 041009		155,14
28-05-2022 07:35:22	Kontrolmærke	Kontrol	3084:	441		Nørrebro St.	MARK_53605 - 0989E5		0,00
28-05-2022 07:35:36	Kontrolmærke	Kontrol	3084:	441		Nørrebro St.	MARK_53605 - 0989E5		0,00
28-05-2022 07:35:54	Kontrolmærke	Kontrol	3084:	441		Nørrebros Runddel St.	MARK_53605 - 0989E5		0,00
28-05-2022 07:41:33	Check ind	Check ind	3084:	442	167	Frederiksberg St.	VAL_20923 - 13C6A4	EasyTrip	85,14
28-05-2022 07:58:09	Kontrolmærke	Kontrol	3084:	442	167	Øresund St.	MARK_49515 - 098238		0,00
28-05-2022 09:04:39	Check ud	Check ud	3084:	443	167	Københavns Lufthavn	VAL_23703 - 1389CD	EasyTrip	136,74

Skærbillede fra Rejsekortautomaten, som vises, når der er foretaget tank-op til Rejsekort:



Metro Service har indsendt data fra loggen for den Rejsekortautomat, som klageren benyttede til at tanke sit Rejsekort op. Loggen viser, at der den 28. maj 2022 i tidsrummet 01:49 – 11:26 blev foretaget i alt 14 transaktioner på Rejsekortautomaten, heraf 2 check ind og 12 tank-op inkl. klagerens tank-op kl. 07:33. Loggen har været forevist for ankenævnet.

ANKENÆVNETS BEGRUNDELSE FOR AFGØRELSEN:

Ankenævnet har fra Metro Service modtaget oplysninger fra Back Office om denne sags konkrete rejse, som bekræfter oplysningerne på rejsekortet om, at der ikke var checket ind.

Sammenholdt med logs fra Rejsekortautomaten har ankenævnet ikke grundlag for at konstatere, at klageren havde checket sit rejsekort korrekt ind på den pågældende rejse, hvor kontrollen foregik. Loggen fra Rejsekortautomaten viser, at automaten var fuldt funktionsdygtig, idet der er foretaget såvel optankninger som check ind af andre brugere af Rejsekort.

Det fremgår af klagerens rejsehistorik, at han 6 minutter senere checkede Rejsekortet ind på Frederiksberg st. og ud igen på Lufthavnen st., hvorfor det manglende check-ind heller ikke kan skyldes fejl på selve rejsekortet.

I henhold til Rejsekort rejseregler og Fælles landsdækkende rejseregler skal Rejsekort checkes ind ved rejsens begyndelse, og det er passagerens eget ansvar at være checket korrekt ind.

Kontrolafgiften for manglende check-ind blev derfor pålagt med rette.

Den omstændighed, at klagerens optankning ikke kunne gennemføres i første forsøg, kan ikke føre til et andet resultat, da ankenævnet ikke kan lægge til grund, at dette skyldtes fejl på Rejsekortautomaten.

Metro Service har i en lignende tidligere ankenævns sag (2019-0257) indsendt videoeksempler, som viser et check-ind-forløb på en rejsekortautomat, og ankenævnet fandt på baggrund heraf, at det fremgår tilstrækkelig tydeligt på automatens skærm, hvorledes man foretager et korrekt check-ind på Rejsekortautomaten.

Dette er et område med stor mulighed for omgåelse af passagerens pligt til at sørge for betaling af sin rejse, hvis det accepteres, at der er checket ind på Rejsekortet, uanset at dette ikke er registreret på kortet eller i Back Office.

Det bemærkes, at det ikke er en betingelse for at pålægge en kontrolafgift at passageren bevidst har forsøgt at unddrage sig betaling for rejsen.

Ankenævnet finder herefter, at der ikke har foreligget sådanne særlige omstændigheder, at kontrolafgiften skal frafaldes.

RETSGRUNDLAG:

Ifølge § 2, stk. 1, jf. § 3 nr. 3 i lovebekendtgørelse 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. 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. 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. Rejsekortet må endvidere ikke være så slidt/tildækket, at navnet ikke kan læses.

PARTERNES ARGUMENTER OVER FOR ANKENÆVNEN:

Klageren anfører følgende:

”I am writing to you because I got fined whilst using the metro in the early morning of the 28th of May.

I am fully aware of my mistake, but please, hear me out.

On that day, I had an early flight to Aalborg to visit the Carnival, and I got a message from my airline company that I would need to be at the airport earlier due to the long lines at the security checkpoint. Already that put me under pressure. As soon as I got to the metro, I attempted to register my rejsekort, but I could not because the balance was too low. So I tried to refill it, which wasn't successful until 4th attempt. As soon as I managed to do it, I caught a metro that just had arrived. Until the ticket control showed up, I thought I had checked in.

I had a conversation with a very understanding ticket officer. I explained myself, and he told me he still had to write me a ticket, but he also reported it as an honest mistake and told me to dispute it.

That was my explanation to the metro's support team when I tried to dispute my ticket. My main concern now is rejsekort top-up stations and ticket machines. I noticed it is not my first time having issues refilling my rejsekort. Each year we spend more and more money on transportation, and it seems we cannot keep the trivial things up and running - ticket purchases. I swear, I would have checked in if I did not spend that time topping up my travel card.

It will be my first ticket. I always check in on public transport and treat its staff with respect. I hope you will try to understand me, and once again, I am legitimately sorry.”

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 travel document on demand to the ticket inspectors.

In cases where passengers are not able to present a valid travel document, 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 Joint-National-Travel-Regulations.ashx (rejsekort.dk) 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 travel document. They do not distinguish between an intentional or unintentional mistake. They only check the validity of the travel document

In the case in question, the complainant and was met by a steward inspecting tickets on the 28 May 2022 at app. 07:35 between Nørrebro station and Frederiksberg station. The complainant presented a Rejsekort ‘Anonymous’, which, however, was not checked in. As the complainant thus did not have a valid ticket, a fare evasion ticket was issued in accordance with current rules.

The complainant states that he is aware that it is always the passenger who must ensure that he has a valid ticket before boarding, including that Rejsekortet is correctly checked in.

In the specific case, however, the complainant considers himself exempt from this rule as he states that the Rejsekort vending machine at Nørrebro station did not work optimally and that he was under time pressure because he had to catch a plane.

The complainant also claims that he often experiences that the rejsekort equipment does not work and also states that he believes that both the stewards and the staff in the Customer Service Department do not examine the equipment properly before they issue/maintain fare evasion tickets.

Rejsekorts equipment at stations is electronically monitored 24/7 and if a piece of equipment does not work, the equipment sends a message to the 'system' after which technicians solve the error. In addition, all equipment at Metro stations is checked every single, very early, morning and any detected faults (such as vandalism, broken lighting, etc.) are reported to the Control Room where it appears in the electronic logbook which registers all trains, any power failures, all passenger information and much more, and which issues an SAP order to rectify any errors and omissions.

As far as the stewards' work in connection with issuing fare evasion tickets is concerned, a steward may not carry out any kind of case processing but may only decide whether a valid ticket can be presented and if not, issue a fare evasion ticket.

When the Customer Service Department processes an objection to a fare evasion ticket, it is investigated, among other things, whether there has been a fault in the equipment.

In the specific case, there has been no fault in the equipment. To substantiate that claim, we have attached a transcript from the RVM that the complainant used at Nørrebro station. As can be seen from the printout, there have been many other transactions with both topping and check-in. See attached 'Equipment history'.

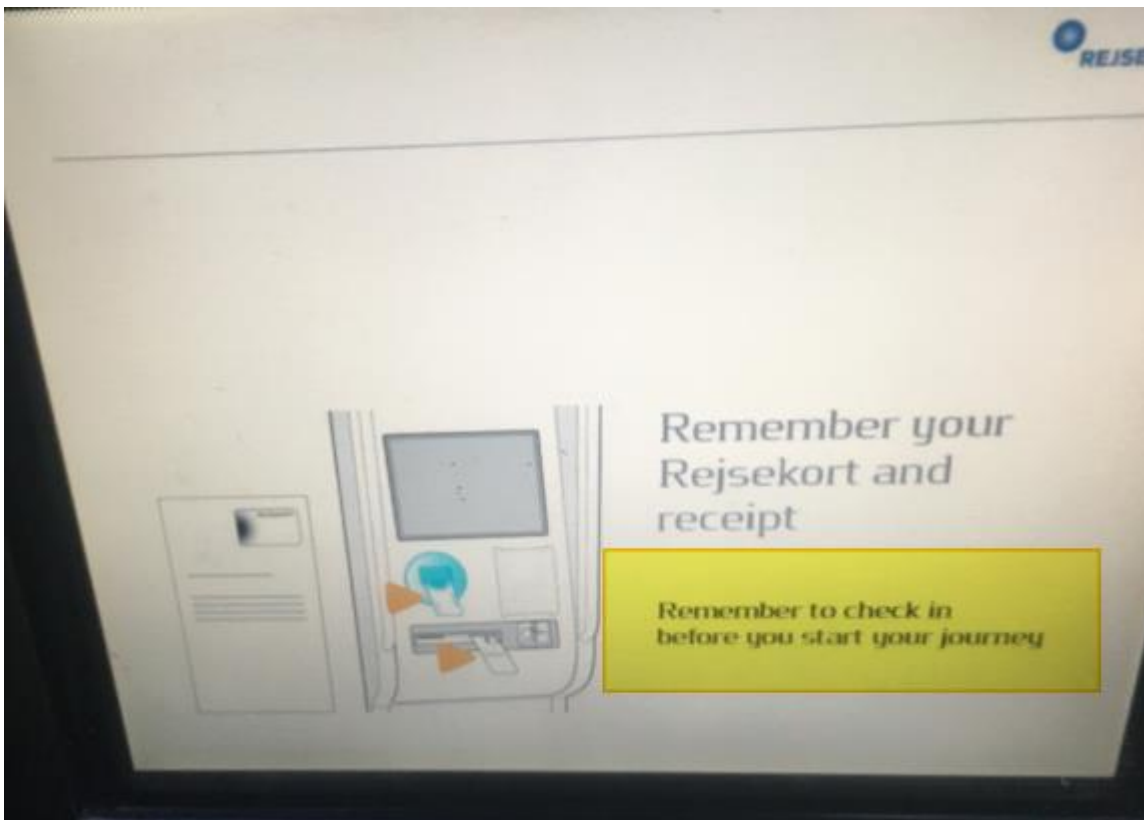
No matter what type of Rejsekort you use, you will always receive a small warning on the validator-display when you end a trip with a check out if the card balance is either approaching or is already below the required balance to be able to check in the next time you want to use the card.

See the example below. The example is in Danish, but if the Rejsekort used is set to 'English', the text in the display will also be in English.



In the attached file 'Rejsekort history' you can see that when the complainant ended his journey at Nørrebro station on 27 May at 13:28, the balance on his anonymous Rejsekort dropped to DKK 55.14 and thus the complainant will have received a message in the validator's display that the balance was too low for a new trip.

When you top-on your Rejsekort on a RVM, the last screen in the flow is the text below, which draws attention to the fact that you must remember to check in if you want to travel.



We would like to emphasize that we certainly do not believe that the complainant has tried to evade payment for the journey on purpose, but in any case, the rule of having a valid ticket applies to all passengers on every single journey.

As there is no fault in the equipment, we therefore maintain that the fine is imposed correctly, and that the Customer Service Department's subsequent maintenance of the fine is also in accordance with applicable rules and thus maintains our claim for payment of fine no. xx DKK 750.00."

Hertil har klageren anført:

"Firstly, I would like to say that Metro service did not fully understand my concern. As a software engineer, I know how these systems work, and of course, they should have a fault-reporting system in place, which Metro Service described. My concern is the **payment step** of the topping-up process. If the Metro Service system reported problems effectively, they would surely have noticed an overall increase in failed transactions (I am not mentioning the DOT application, which persists same issues).

Secondly, my question is about fare evasion warnings. Is there no such thing anymore? Metro Service mentions that I did not try to evade payment for the journey on purpose. Why should I bare the same harsh punishment as people who deliberately do not pay?

We are here to improve public transportation with the help of IT systems and personnel. Sometimes people make mistakes. It can happen from both sides of the arguing parties, but we can not simply rule the human factor out of situations where systems operate with fault."

Hertil har indklagede anført:

“With reference to the attached appendices in our reply of 20 June 2022, we maintain that there was no error in the rejsekort machine the complainant used to top-up, which is also supported by the fact that the complainant actually topped-up 100 kroner on his anonymous card but did not check the card in before boarding.

As far as the complainant's question about a warning is concerned, we must inform that at Metro Service A/S we do not use fare evasion warnings and have never done so. The rules apply for everyone, regardless of whether you are traveling for the first time or are an experienced user of the Metro; you must have a valid ticket, including a correct checked-in rejsekort, before boarding the train. If you do not have that, you must pay a fare evasion fee.

We do not relate to our customers' intentions to purchase tickets, but only to the facts. We treat all passengers alike and since the facts in the present case are that the complainant did not have a valid ticket/card, a fare evasion ticket was issued in accordance with applicable rules.

As the complainant put DKK 100 on his card, it has been proven that the equipment worked as intended and that the lack of check-in was due to incorrect operation on the part of the complainant.”

På ankenævnets vegne



Tine Vuust
Nævnformand