

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 23-0037
- Klageren:** XX
2100 København Ø
- Indklagede:** Metroselskabet I/S v/Metro Service A/S
CVR-nummer: 21 26 38 34
- Klagen vedrører:** Kontrolafgift på 750 kr. grundet manglende metrotillæg på Pendlerkort
- Parternes krav:** Klageren ønsker, at ankenævnet annullerer kontrolafgiften, og gør gældende, at han havde glemt, at hans Pendlerkort ikke gav adgang til at rejse med Metroen
- Indklagede fastholder kontrolafgiften
- Ankenævnets sammensætning:** Nævnensformand, landsdommer Tine Vuust
Jacob Ruben Hansen (2 stemmer)
Helle Berg Johansen
Dorte Lundqvist Bang

Ankenævnet for Bus, Tog og Metro har på sit møde den 14. juni 2023 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:

Klageren, som er bosat i København, men ikke er dansktalende, rejste om aftenen den 13. januar 2023 med Metroen fra Nordhavn st. til Trianglen st., da der efter Nordhavn st. var kontrol ombord. Klageren foreviste sit Pendlerkort (et Grønt Rejsekort Personligt), som var gyldigt i den pågældende zone, men imidlertid var uden metrotillæg.

Metrotillægget er et lovbestemt tillæg, som trådte i kraft for alle Metroens linjer i 2019 i forbindelse med åbningen af Metro-Cityringen, hvorefter passagerer med pendlerkort skal betale enten et månedligt tillæg à 60 kr. eller en tillægsbillet à 12 kr. pr. gang for at rejse med metroen.

Da klageren ikke havde betalt metrotillæg, blev han derfor ved kontrollen kl. 19:11 pålagt en kontrolafgift på 750 kr.

Den 14. januar 2023 anmodede klageren Metro Service om at frafalde kontrolafgiften og begrundede det med, at han ikke havde prøvet at snyde, men da han oftest cykler, havde han glemmt, at hans Pendlerkort, som giver adgang til at rejse med alle tog og busser i København, hvor han er bosat, og i Trekroner, hvor han arbejder, ikke gav ham adgang til at rejse med Metroen til trods for, at han hver måned betaler 1.150 kr. for Pendlerkortet.

Metro Service fastholdt kontrolafgiften den 16. januar 2023 med henvisning til selvbetjeningsprincippet og til, at klageren ikke havde betalt det krævede metrotillæg.

Under sagens behandling i ankenævnet har Metro Service oplyst, at klageren har et Rejsekort Personligt, som han har benyttet til et antal rejser med Metroen. Således benyttede klageren dette Rejsekort om morgenen den 13. januar 2023 – samme dag, hvor han om aftenen blev pålagt kontrolafgiften – til en rejse med Metroen, idet han checkede ind på en af Metroens kortlæsere på Trianglen st. kl. 08:27 og ud igen på en anden af Metroens kortlæsere på København H kl. 08:40.

Fra klagerens rejsehistorik:

Reg. udstyr dato/kl.	Modtaget system dato/kl.	Regnskabsperiode	Handling	Transakt.type	Kortnr.	Kortsekv.nr.	Rejsekv.nr.	Lokation	Udstyr / -nr.	Produkttype
13-01-2023 08:27:56	13-01-2023 08:44:15	01-01-2023	Check ind	Check ind		155	66	Trianglen St.	VAL_67179 - 13F98A	EasyTrip
13-01-2023 08:40:34	13-01-2023 09:14:22	01-01-2023	Check ud	Check ud		156	66	København H	VAL_67716 - 139B70	EasyTrip

ANKENÆVNETS BEGRUNDELSE FOR AFGØRELSEN:

Der gælder i den kollektive transport et princip om selvbetjening, hvilket indebærer, at det som udgangspunkt er passagerens eget ansvar at have gyldig rejsehjemmel.

Da klageren den 13. januar 2023 rejste med Metroen på sit Pendlerkort, havde han ikke tilkøbt det lovpligtige metrotillæg til sit Pendlerkort, og han kunne således ved kontrollen i Metroen ikke forevise gyldig rejsehjemmel.

Kontrolafgiften blev dermed pålagt klageren med rette.

Den omstændighed, at klageren i forbindelse med den pågældende rejse ikke huskede, at han ikke kunne rejse med Metroen på sit Pendlerkort, kan efter ankenævnet opfattelse i den konkrete situation ikke føre til et andet resultat.

Ankenævnet bemærker, at klageren tidligere på dagen den 13. januar 2023 checkede ind på sit Rejsekort Personligt for at betale for en rejse med Metroen, hvorfor ankenævnet vurderer, at klageren var bevidst om, at han ikke kunne rejse med Metroen på sit Pendlerkort, men glemte at billettere på anden vis, før han om aftenen den 13. januar 2023 steg på Metroen.

Det bemærkes endvidere, at det ikke er en betingelse for at pålægge en kontrolafgift, at passageren bevidst har søgt at unddrage sig at betale for rejsen.

Som følge af det anførte, finder ankenævnet, at der ikke har foreligget sådanne særlige omstændigheder, der kan medføre, at klageren ikke selv bærer ansvaret for at have gyldig rejsehjemmel til sin rejse med Metroen.

Klageren kan herefter ikke fritages for betaling af kontrolafgiften.

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 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 have requested a courtesy lift of the fine I received based on the arguments that I detail below, but Copenhagen Metro refused. I would like thereby to appeal from this decision.

The case:

I took the metro M4 and then M3 for two stations from Nordhavn to Trianglen on 13/01/2023. I forgot that my pendlerkort that gives me access to all trains and buses between Copenhagen (where I live) and Trekroner (where I work) does not give me access to the metro.

As I am most often cycling and very rarely using the metro, I had totally forgotten that I was not allowed to use the metro with my pendlerkort. I shall also mention that in previous European capital cities where I lived until recently (Paris and Vienna), local equivalent of pendlerkort always give access to every kind of public transportation within the concerned zones. It is therefore easy to forget that rules are more subtle in Copenhagen.

I did not mean to fraud in any way. As you can see in your records, I consistently pay my pendlerkort for my daily commute (pendlerkort xx; rejsekort xx). Generally speaking, I wish to support quality public services and therefore never fraud.

I do not contest that I was at fault by forgetting that my pendlerkort does not apply to the metro. What I am contesting is the philosophy of the fine in my case: are fines a mean to fight fraud, or are they meant to punish simple mistakes that frankly everyone can do? I understand that discriminating between fraud and mistake is not easy. However in my case I hope it is quite clear that there never was a fraud intention considering how much I pay each month for my pendlerkort.

If I may say, I pay 1179 DKK a month. That's a lot of money for not having even access to the metro and it's hardly understandable — especially at times when public transportation should be favored over private cars, etc. For instance Paris and Vienna are both of much bigger size than Copenhagen, offer an equally good public transportation and their rejsekort/pendlerkort equivalent are yet much cheaper.

Unlimited pendlerkort in Vienna is 365 euros a year or 2715 DKK. That's not even three months of my limited non-metro pendlerkort in Copenhagen. Differences in local price levels cannot be a satisfactory explanation: Paris, for instance, is even more expensive than Copenhagen yet the all zones all transportation means local pendlerkort is just above half the price of my limited non-metro pendlerkort in Copenhagen (and 50% of it is paid by the employer). I wonder what kind of policy decisions were made that resulted on such strange and discouraging rules in Copenhagen, otherwise a great city to live in.

I would therefore like to kindly request a courtesy lift of the fine. It is unfair considering I do pay public transportation every month. Moreover, 750 DKK is a lot of money for a single oversight, all the more so in these days of inflation.

Be sure that I will not forget again that my pendlerkort is not valid in the metro. I will also avoid using the metro as much as possible considering the additional cost it represents. I therefore hope for your understanding and clemency.

Should my appeal end up in a refusal, I hope at least to be explained what kind of weird policy decision my fine is a consequence of. That would pay a bit for the 160 DKK of the complaint.

Please let me know should you require any additional information.”

Indklagede anfører følgende:

” The complainant received the fine on 13. January 2023, 19:06, as he could not present a valid ticket or card at the time of ticketing. The complainant was met by the inspector after the metro had left Nordhavn station.

The complainant presented a Rejsekort pendlerkort (commuter pass) without metro supplement included and could not present a supplementary ticket to this pendlerkort, and due to this he had entered the metro without a valid card or ticket.

In cases where a valid travel document or card cannot be presented when asked for by the inspector, it must be accepted to pay a fine, which - when using the metro - is 750 DKK for an adult. This basic rule is a prerequisite for the self-service system that applies to journeys by public transport. This information can be seen partly on the information boards set up at all metro stations and partly from the Joint Nation Travel Regulations, which are available on [DOT's website](#).

The complainant writes in both his inquiry to us and to the Appeal board that he had forgotten that his commuter card did not give access to travel on the metro.

It is of course very unfortunate that the complainant forgot this and therefore did not acquire any other form of valid travel permit, but we do note that the complainant was aware that a supplement was required (additional ticket/metro supplement) to the commuter card.

We must state that we cannot or will not relate to how the rules may be in all other countries.

In Denmark it was adopted by law (by the government) that when the new metro – Cityring – was opened a small fee, when using commuter pass, had to be paid for using the metro. This supplement is part of the financing of the Cityring.

We fully understand that it is a really unfortunate situation that the complainant has found himself in, but as we want to treat all our customers equally, we do relate to whether the lack of a valid ticket or card is due to a conscious or unconscious act, whether it is a child, a student, a pensioner, a tourist, or if the lack of valid travel permit is due to illness or a diagnosis - we deal solely with the fact that it is the passenger's responsibility to secure a valid ticket or a valid card before boarding.

The only distinction in relation to the amount of the fine is whether this is issued to an adult, a child, a bicycle or a dog, cf. [Joint National Travel Regulations - 2.7.2. Fees](#).

In connection with case processing, we do not relate to any previous travel history.

Based on the above we find it indisputable, that the complainant could not present a valid card or ticket, and was aware that his card alone was not valid when using the metro, and that he thus received a service that he had not paid for. Due to this we find the fine correctly issued and subsequently correctly maintained which is why we uphold our claim of 750 DKK.”

Hertil har klageren bemærket:

” I do not have much to comment upon the reply by Metro Service. It is in line with what I expected. I would like to highlight two points:

First, Metro service's reply is self-contradictory. They acknowledge that I had forgotten my pendlerkort did not apply to the metro but argue that I was aware of it. Obviously, I was not aware anymore that my pendlerkort was not valid in the metro, otherwise I would have bought a ticket.

Metro service implicitly makes the case that I was purposefully frauding. My travel payments history speaks against such accusations. However, Metro service refuses to take into account the contextual elements I provided in my appeal.

Second, Metro service thus exhibits a purely bureaucratic understanding of the application of the rule. This refusal to contextualize is unfortunate. Indeed, the contextual elements I provided are the reason why I was not aware anymore of the unusual ticketing and pricing rules applying in Copenhagen's metro.

I am trustful that the Appeal Board has a more sophisticated understanding of justice and that it will consider the context and my travel history that explain why I was devoid of a valid ticket and show that there was never an intention to fraud.

I am also hopeful that the Appeal board would seize this opportunity to incentivize Metro service to revise their fine policy."

Hertil har indklagede bemærket:

" We do not understand the complainants' comments and how he finds our reply self-contradictory and writes ***"They acknowledge that I had forgotten my pendlerkort did not apply to the metro but argue that I was aware of it. Obviously, I was not aware anymore that my pendlerkort was not valid in the metro, otherwise I would have bought a ticket."***

The complainant himself writes in his inquiry sent to us January 14th, 2023:

I took the metro for two stations from Nordhavn to Trianglen and I forgot that my pendlerkort that gives me access to all trains and buses between Copenhagen (where I live) and Trekroner (where I work) does not give me access to the metro, despite its price of 1150 DKK a month.

... and in the complaint to the Appeal Board on January 17th, 2023:

I took the metro M4 and then M3 for two stations from Nordhavn to Trianglen on 13/01/2023. I forgot that my pendlerkort that gives me access to all trains and buses between Copenhagen (where I live) and Trekroner (where I work) does not give me access to the metro.

As I am most often cycling and very rarely using the metro, I had totally forgotten that I was not allowed to use the metro with my pendlerkort. I shall also mention that in previous European capital cities where I lived until recently (Paris and Vienna), local equivalent of pendlerkort always give access to every kind of public transportation within the concerned zones. It is therefore easy to forget that rules are more subtle in Copenhagen.

... and furthermore, later in the complaint to the Appeal Board:

I do not contest that I was at fault by forgetting that my pendlerkort does not apply to the metro.

What I am contesting is the philosophy of the fine in my case: are fines a mean to fight fraud, or are they meant to punish simple mistakes that frankly everyone can do? I understand that discriminating between fraud and mistake is not easy. However in my case I hope it is quite clear that there never was a fraud intention considering how much I pay each month for my pendlerkort.

We must point out, that at no time have we used the word fraud or accused the complainant of fraud in connection with the fact, that the complainant had forgotten, that his pendlerkort did not allow him to use the metro.

We do not judge any of our customers, we only relate to facts, that it is the customers obligation to have a valid ticket before bordering the metro. In this case the complainant did not have a valid ticket or card when met by the inspector.

The metro operates – as do all other public transportations in Denmark (train, buses, letbane etc.) – after rules stated in [the Joint National Travel Regulations](#).

In section 2.7 it is written that the customer must be in possession of a valid ticket before boarding and be able to present this valid ticket upon inspection otherwise a fine will be issued.

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 card that is valid for a specific period of time (e.g. a pensioner's card) outside the card's term of validity, or if other means of transport or travel time restrictions are not respected (e.g. lack of surcharge for DSB 1' or for the Metro, or carrying a bicycle outside the times when they are permitted) is also deemed to be a customer without a valid travel document.





It is thus indisputable that the complainant could *not* present a valid pendlerkort and was therefore entitled to be issued a fine, as he had received a service that he had not paid for.

In conclusion we have noted that the complainant also has a Rejsekort Personal. From the travel card history, we can see that the complainant makes a number of journeys where this Rejsekort Personal is used in the metro, presumably as his pendlerkort does not cover journeys with the metro.

Among other things, we can see that on January 13th, 2023, in the morning, the complainant used this Rejsekort Personal in connection with the journey below:

Reg. udstyr dato/kl. ..	Modtaget. system dato/kl.	Regnskabsperiode	Handling	Transakt.type	Kortnr.	Kortsekv.nr.	Rejsekv.nr.	Lokation	Udstyr / -nr.	Produkttype
13-01-2023 08:27:56	13-01-2023 08:44:15	01-01-2023	Check ind	Check ind		155	66	Trianglen St.	VAL_67179 - 13F98A	EasyTrip
13-01-2023 08:40:34	13-01-2023 09:14:22	01-01-2023	Check ud	Check ud		156	66	København H	VAL_67716 - 139B70	EasyTrip

As shown below, the validator VAL_67179 is a check-in-extra stand at Trianglen metro station and validator VAL_67179 is a check-out stand at Copenhagen H metro station.

Trianglen			VAL_67179	Tri 102-9	13f98a	OK	Group Check In
København H - CR			VAL_67716	Kh 102-6	139b70	OK	Check Out

We must therefore conclude that the complainant is well aware that his pendlerkort does not include the metro, and an alternative ticket or card therefore is necessary.”

På ankenævnets vegne



Tine Vuust
Nævnensformand