

**AFGØRELSE FRA
ANKENÆVNET FOR BUS, TOG OG METRO**

Journalnummer: 2015-0212

Klageren: XX
England

Indklagede: Metroselskabet I/S v/Metro Service A/S

CVRnummer: 21 26 38 34

Klagen vedrører: Kontrolafgift på 750 kr. for manglende billet.

Parternes krav: Klageren ønsker kontrolafgiften annulleret
Indklagede fastholder denne

**Ankenævnets
sammensætning:** Nævnnsformand, landsdommer Tine Vuust
Asta Ostrowski
Torben Steenberg
Bjarne Lindberg Bak
Alice Stærdahl Andersen

Ankenævnet for Bus, Tog og Metro har på et møde den 19. april 2016 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 Metro Service, som sender et girokort 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 på www.domstol.dk, www.advokatsamfundet.dk og /eller eget forsikringssselskab om eventuel forsikringsretshjælp.

SAGENS OMSTÆNDIGHEDER:

Klageren og hendes kæreste er bosiddende i London men var på en en-dagsrejse til København. De købte billetter i billetautomaten i Lufthavnen den 26. juli 2015 og rejste mod centrum.

Da de den følgende dag den 27. juli 2015 skulle retur med metroen til Lufthavnen st., havde de tunge kufferter med, hvorfor de tog elevatoren til perronen. Det er ikke oplyst, fra hvilken metrostation de rejste. Ifølge klageren var hun træt, stresset og lidt påvirket af sin medicin, hvorfor hun havde svært ved at fokusere på eventuelle informationstavler vedrørende køb af billetter. De kunne ikke se nogen billetautomat på perronen og kunne hun ikke finde noget personale, som kunne hjælpe dem, hvorfor de besluttede at købe en billet, når de ankom til Lufthavns st., idet de kendte automaten dér.

Da metroen havde forladt Kastrup st. blev deres rejsehjemmel kontrolleret. Da de ikke kunne forevise nogen billet, fik de pålagt en kontrolafgift.

Af stewardens noter fremgår: "intet forevist"

Den 1. og 3. september 2015 anmodede klageren Metro Service om at få annulleret sin kontrolafgift med blandt andet den begrundelse, at hun ikke havde intentioner om at snyde, da hun ønskede at købe en billet, når hun var nået frem til Lufthavns stationen. Klageren oplyste endvidere, at hun prøvede at finde et informationspunkt, hvor hun kunne købe en billet, men at der ikke fandtes noget på den station, hvor hun steg på metroen. Klageren oplyste, at hun var stresset og påvirket af den medicin hun havde indtaget, hvorfor hun blandt andet ikke fokusere på at læse teksten vedrørende køb af billetter på informationstavlen på stationen.

Den 14. august og 3. september 2015 fastholdt Metro Service deres kontrolafgift med henvisning til blandt metros selvbetjeningssystem samt at der i elevatoren til perronen var et piktogram, som viste, på hvilken etage man kunne købe billetter.

ANKENÆVNETS BEGRUNDELSE:

Klageren kunne ved kontrollen ikke forevise gyldig rejsehjemmel, idet hun var steget ombord på metroen uden forinden at have købt en billet, som rejsereglerne foreskriver. Kontrolafgiften blev dermed pålagt med rette.

Ankenævnet lægger til grund som anført af Metro Service, at klageren må have steget på metroen på enten Nørreport st. eller Kgs. Nytorv st. Herefter bemærker ankenævnet, at der i elevatoren til perronen er et piktogram, som viser, på hvilken platform man kan købe billetter, eller for Nørreport's vedkommende, at elevatoren ikke stopper ved billetautomaterne, hvorfor man henvises til at benytte en anden elevator.

Klageren har oplyst, at hun ikke kunne læse informationstavlerne så godt, idet hun var medicineret og stresset, men ankenævnet finder, at dette forhold ikke udgør sådan særlig omstændighed, at kontrolafgiften skal bortfalde.

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.

Trafikselskaberne i Hovedstadsområdet har vedtaget fælles rejseregler, hvori hjemmelen til udstedelse af kontrolafgift fremgår. Det anføres således bl.a., at passageren skal have gyldig rejsehjemmel til hele rejsen, og at denne skal kunne vises frem for kontrolpersonalet under hele rejsen, ved udstigning, i metroen indtil metroens område forlades, og i S-tog og lokalbanetog indtil peronen forlades.

Passagerer, der ikke på forlangende viser gyldig billet eller kort, herunder korrekt ind-checket rejsekort, skal betale en kontrolafgift på 750 kr.

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører, at:

"I am writing to request an appeal of the dismissal decision. There were several factors that contributed to my current ticket fine but I would like to appeal as I have tried to explain myself as clear as I could but I still believe that Metro Service in not treating me fairly. I was given a fine on my way to airport on the 27th of July 2015, I have mentioned that it was not my intention to travel without a ticket. My bag was quite heavy and I decided to take a lift to approach metro platform. Firstly, just because I was unemployed for a long time, I was a bit stress I was prescribed some medication which make my sight a bit unclear. I was unable to find any ticket office on the platform and there was no one to ask. I did not put any attention to any posters on the platform firstly because I am not able to read due to medication, secondly I was stressed as the train approached and I was travelling without ticket but with the good will to speak with someone when I approach destination and I know where the ticket machine is as I was there before and I bought the ticket form the same machine.

I was travelling with 100% confidence that I will be able to purchase this ticket when I will approach my final station. I have seen this machines before at the Airport platform, as this is the one I have used to buy a ticket when I arrived to Copenhagen. I was very honest with the ticket inspector who stopped my for checking my ticket and I have explained whole situation. She has mentioned that I can appeal and clarify it all writing to you. She also mentioned that she understand and sometimes it happens, especially with tourists (obviously she had this kind of situations before). This was not my intention at all to travel without ticket, I was just unable to ask anyone at the platform, furthermore there was no ticket machine on the platform and I didn't even know that I have missed one floor with some ticket machines. Plus my health condition, stress for being unable to buy ticket or ask someone due to my vision problems caused tablets which I am taking (I am happy to provide doctor's letter confirming my medication intake).

I think it is worth saying that I am living in London, where you are allowed to travel without a ticket if there is any issue to buy a ticket on your way but with fair reason. As long as you will reach your destination there is a ticket office where you need to explain yourself and purchase a ticket. Of course there is only for specific situations but this is exactly what I have experienced while visiting Copenhagen metro not being to ask anyone. Some people especially tourists, are not always sure that they need tickets or where to get them. Some think they can purchase them on the train or metro (like in my origin country) and when they realize that they can't do it, they are fined... When I was observing people on the next stop, I have seen the same system being in place – touch in and out cards. I thought, this is your practice in place and maybe there are some stations where you can't simply buy a ticket and you have to do so when approaching travel destination. I was sure I will be able to do this, to buy a ticket. I would expect little consideration from those who issue the fines. I feel very disappointed. I was assured that I can appeal and speak with you directly and I had a feeling, I was understood by the ticket inspector.

Do you think is there anything you can do to investigate my case again and take into consideration my medication intake, being distracted and staggering? I was unable to speak with any human being on the platform where I was taking a train to the Airport. I had no objection to purchase a ticket, simply I was not able but my aim was to do it!"

Indklagede anfører, at:

"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 as well as on our information boards which are placed several places at every station. The information boards contain travel information in both English and Danish.

Our Metro staff is instructed 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. It is unfortunately not sufficient to have the intention to buy a ticket at the end station – the ticket must be bought before entering the metro.

Among the information on the board **Trafikinformation / Traffic information** is:

The metro operates 24/7

During daytime: 2-6 minutes between train departures.
During night: 10-20 minutes between train departures.
Longer travel time might occur
– when transferring from M1 to M2
– due to planned maintenance work
– due to operational disruptions
Any changes will be announced on www.m.dk.

Penalty

Remember it is your responsibility to have a valid ticket or travel card for both you and your potential companions. Lack of ticket or card and travelling during curfew (pensioners and/or bicycles) will per 1. January 2013 result in a penalty charge of 750 DKK per adult, 375 DKK per child/dog and 100 DKK per bicycle and onward travel in this period is not allowed. We refer you to www.m.dk and the travel rules for applicable penalty charges.

Children

Up to two children under the age of 12 travel for free in the Metro, if accompanied by a paying adult. Children traveling alone and under the age of 16 must have a children's ticket.

Dogs

Your dog must have a children's ticket. Smaller dogs travel for free in the Metro, if carried in a bag.

Bicycle

You can take a bicycle with you when you have bought a bike ticket, and when you travel outside curfew for bikes - that is all weekdays between 7:00-9:00 am and between 15:30-17:30 pm. In June, July and August, however, you can take your bicycle with you at all times, as long as you have a valid ticket also for the bicycle.

Travel card

When using a travel card in the Metro:

- Make a **Check-in** at the start of the trip on **The Blue Point**. **Check-in** is registered on the chip in your travel card, when the card reader returns a "ding" and an **OK** on the card reader screen.
- If you remove your travel card too quickly from **The Blue Point**, the chip is not registering your **Check-in**, and you will hear a "dong" and the message **Error. Please try again**.
- Make a **Check-in** whenever you change mode of transport
- Make a **Check-out** at the end of the trip and wait for the screen to show the cost of the trip and an **OK**.

If you do not make a **Check-in** at the start of the trip or when changing mode of transport, you do not have a valid ticket, and you risk getting a fine in accordance with applicable travel regulations.

If you forget to make a **Check out**, you will lose the prepayment.

... and in the bottom:

Kontakt

Hjælp til din rejse kan fås ved at benytte de gule opkaldssteder, som findes på perroner og i tog eller benytte infoknappene på billetautomaten. Yderligere information findes på hjemmesiden www.m.dk og i folderen "Rejseregler", som findes på stationerne.

Contact and further information

You can get additional assistance, by using the yellow dial locations that you find on both platforms and in the trains or you can use the info button on the ticket vending machine.

Alternatively www.m.dk and the folder "Rejseregler" provide more information.

Call points - as mentioned above - can be found several places at all 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. This operator can, in case he or she cannot help over the call point, call a steward to the station for help and/or guidance.

The complainant do not specify which station she used when entering the metro but if she entered an elevator going directly to the platform without stop, it must have been Kongens Nytorv station or Nørreport station. In this case the information about the ticket machines is to be found inside the elevator – please see below:



**Elevatoren
stopper ikke ved
billetautomaterne.
Benyt den anden
elevاتور.**

This lift does not stop at the ticket machines.
Please use the other lift.

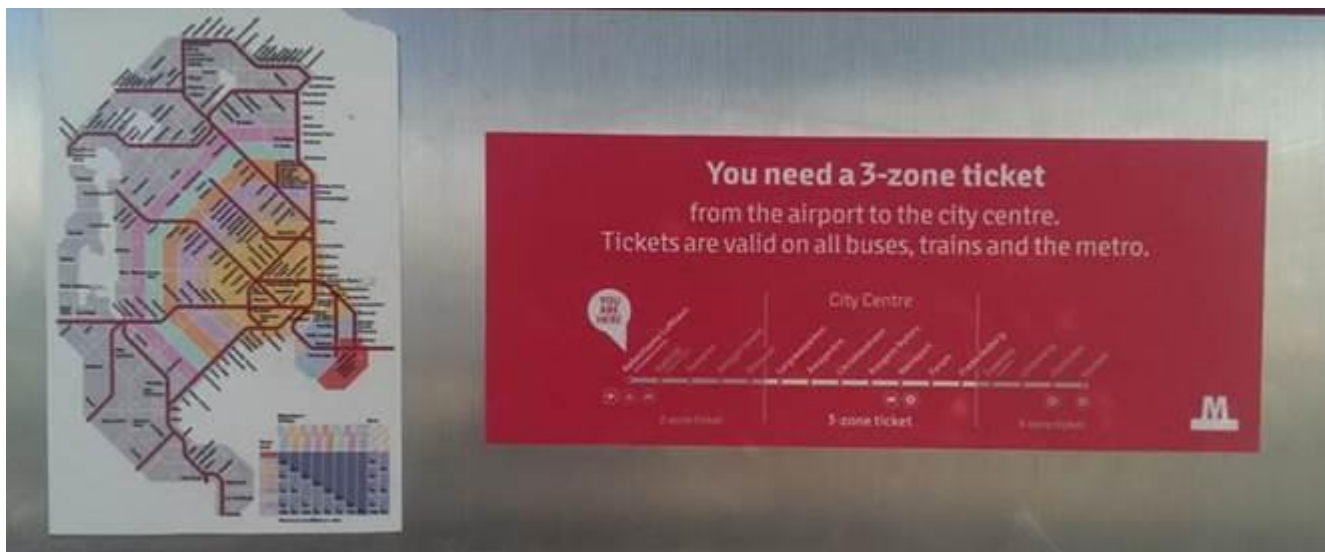
All other elevators have pictograms showing which level tickets can be bought, except these 2 new elevators at Nørreport and Kongens Nytorv (where the above is to be found inside the elevator).

Whether or not the complainant might have been confident that it would be okay to purchase the ticket when approaching the final station, or the issue about the complainant's health condition was a legal reason for not buying a ticket before entering the metro, we do not find that this changes the fact that the fare evasion ticket was issued correctly, as the complainant could not present a ticket when the inspector asked for it.

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. As we want to treat all passengers equally, we only consider the fact that it is the customer's responsibility - before boarding the metro - to secure a ticket, which can be presented on demand. **"Billeder fra Metro Service:**



The picture below is a close up of information above the screen on the ticket vending machine.



På ankenævnets vegne

Tine Vuust
Nævnetsformand