

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer:	2015-0262
Klageren:	XX på egne og på vegne af: XX Tyskland
Indklagede:	Metroselskabet I/S v/Metro Service A/S
CVRnummer:	21 26 38 34
Klagen vedrører:	Kontrolafgift på 750 kr. til alle fire rejsende, i alt 3000 kr. grundet ud-løbne billetter.
Parternes krav:	Klageren ønsker kontrolafgifterne annulleret Indklagede fastholder disse
Ankenævnets sammensætning:	Nævnensformand, 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 skal frafalde kontrolafgiften på 750 kr. per person, i alt 3.000 kr.

Da klagerne har fået medhold i klagen, tilbagebetales klagegebyret , jf. ankenævnets vedtægter § 24, stk. 2 .

Metro Service skal betale 10.000kr. for tabt sag i ankenævnet.

- 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 dennes venner købte den 30. september 2015 klokken 13:30 en 3 zoners billet hver, som var gyldig i 75 minutter fra udstedelsen. Herefter gik de ud for at spise en frokost, inden de skulle med metroen til lufthavnen.

Ca. 4 timer senere steg de på metroen, og efter metroen havde forladt Nørreport st., blev de billetteret. Da deres rejsehjemmel ikke i kontrolsituationen var gyldig, fik de hver især pålagt en kontrolafgift i tidsummet 17:19 – 17:30.

Af stewardens noter på kontrolafgifterne fremgik henholdsvis *"pax var tysker og vidste ikke, at hans billet kun virkede i en time, fordi han ikke forstod dansk."*, *"se foto"* og *"intet forevist"*.

Billetterne så således ud:



Den 9. oktober 2015 anmode klageren om annullering af kontrolafgifterne med den begrundelse, at der ingen oplysninger havde været på skærmen på automaten om billetternes gyldighed, da de købte dem.

Den 10. december 2015 fastholdt Metro Service kontrolafgifterne med den begrundelse, at det nederst på billetterne fremgik, at de var gyldige i 75 minutter fra kl: 13:30, samt at der på alle stationer var information om billetter og zonesystemet. Endeligt henviste de til de gule opkaldspunkter, hvor man kunne søge om hjælp til billetteringen.

ANKENÆVNETS BEGRUNDELSE:

Ved kontrol i metroen den 30. september 2015 omkring klokken 17:15 kunne klageren og dennes venner ikke forevise gyldig rejsehjemmel, da de hver havde købt en 3-zoners billet klokken 13:30.

En 3-zoners billet er gyldig i 75 minutter fra udstedelsen, hvorfor billetterne ikke var gyldige, da kontrollen foregik, og kontrolafgiften derfor blev udstedt med rette.

I det engelsksprogede købsforløb var der ikke på købstidspunktet en oplysning om billetternes tidsbegrænsede gyldighed. Ankenævnet finder, at det er en så væsentlig oplysning til kunder, at den burde fremgå af selve købsforløbet. Henset til de oplysninger, der i øvrigt gives, måtte kunderne have en forventning om, at de havde fået alle de relevante oplysninger i forbindelse med selve købet. Oplysningen om tidsgyldighed er under sagens behandling indlagt i købsforløbet. For dansksprogede kunder fremgår oplysningen på selve billetten.

Ankenævnet finder således i den konkrete sag, at Metro Service ikke ved købet gav passagererne tilstrækkelig information om billettens gyldighed, og dermed tilpligtes Metro Service at frafalde klagerens kontrolafgifter.

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 blandt andet at:

"we are writing this letter to complain about the fare evasion ticket / fine we received while travelling on the M2 metro line from Kongens Nytorv to Copenhagen Airport on 30 September 2015. We are a group of four teachers from a high school in Southern Germany who were at that time travelling back from a teacher exchange programme with a Danish 'gymnasium'.

Around 1.30 pm on 30 September 2015, prior to our departure to the airport, we **purchased four 3-zone-tickets** from a vending machine at Kongens Nytorv station. We bought the tickets **in advance** because we wanted to have a relaxed lunch before leaving Copenhagen. Approximately three hours later, after having had lunch together in Kongens Nytorv, we got on the metro to the airport unaware of the fact that the tickets we had bought earlier had expired and were no longer valid although we hadn't used them yet. When we had purchased the tickets there had been no information about this time limit on the screen of the ticket vending machine (see attached images IMG_1162 and IMG_1163), so we did not know that the tickets would expire after a certain time. Unfortunately the **instructions** next to the ticket vending machines did not offer any clear and unambiguous information about the validity of the tickets either (see attached image IMG_1161):

How could we possibly understand from the English "How to buy a ticket"-instructions that the validity of tickets bought at that vending machine would expire 1 hour and 15 minutes **after the time of purchase**? There was no information that the trip had to be started **immediately**.

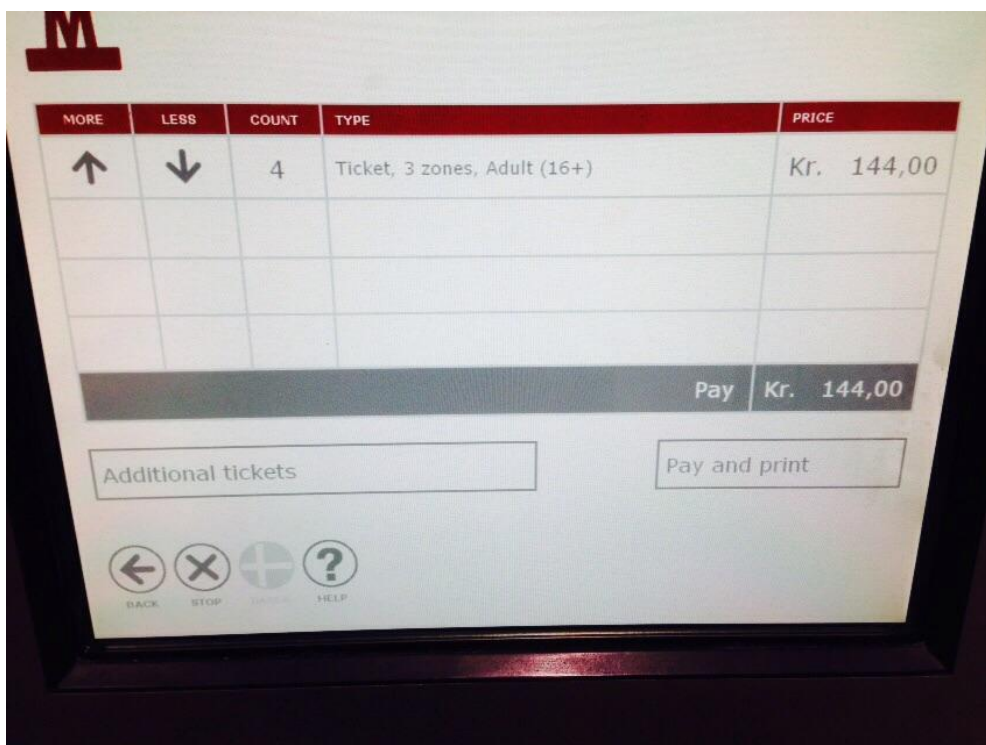
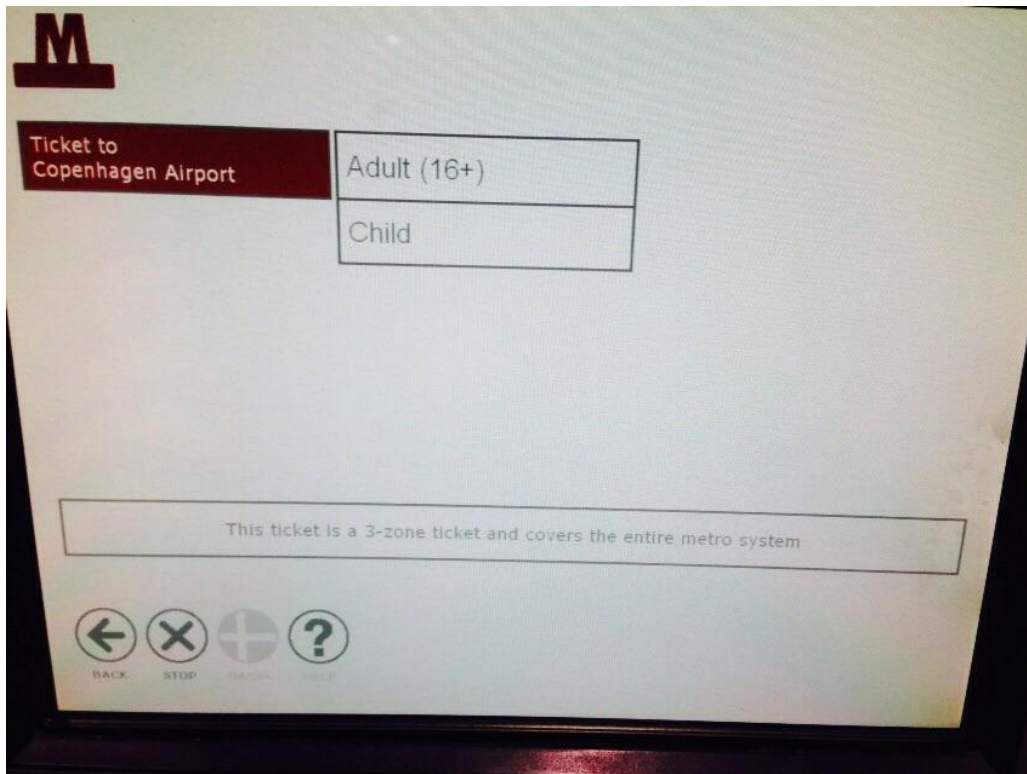
And even today, after having had to deal with Copenhagen Metro instruction for longer than we had ever wished for, we still do not understand what would have happened if we had bought a 10-trip travel card: Would all the ten trips have expired 1 hour later as your instructions suggest? (see attached image IMG_1161)

As in Germany **we are used to buying tickets in advance and then punching them** on the train or tram, we expected to be able to punch our tickets on the Copenhagen Metro as well and believed that the validity would start with the moment of punching. But there weren't any punching devices on the train.

So when we boarded the metro train at Kongens Nytorv we were absolutely sure that we were travelling with appropriate and valid tickets and that we had paid the correct amount in the right price category. We were shocked when we were accused of travelling with expired tickets.

The **information printed on the tickets** was only in Danish, although we had operated the vending machines using an English menu. As none of us speaks any Danish at all, we didn't know what the terms "Voksen", "Fra zoner 1" "Antal zoner 3" and "Gyldig 75 min fra 30/09/2015" meant..."

Derudover har klagerne anført, at det ikke den 30. september 2015 fremgik på skærmen på billetautomaten, at billetten var gyldig fra udstedelsestidspunktet, samt at de fik en bekendt til samme dag at tage et billede af skærmen:



Indklagede anfører blandt andet at:

“As other means of public transportation in the Greater Copenhagen area, the Metro is a self-service system, where it is the responsibility of the passenger to ensure holding a valid ticket, and being able to present it upon request.

In cases where a valid ticket cannot be presented upon request, the passenger must accept a fine, which currently is 750 DKK. This basic rule is a premise for the self-service system used in the Metro. This information can be found in the Metro Travel regulations found on www.m.dk as well as on the Information boards on all stations. The Information boards are all in both Danish and English language.

In the case in question, the four complainants was met by two stewards inspecting tickets on the 30th of September 2015 about 17.20 o'clock. Each of the complainants presented a 3 zone ticket, purchased approximately four hours earlier at 13.30 o'clock, claiming that they thought they could use the tickets later, as this is a possibility in Germany.

Passengers should do an effort in familiarizing themselves with a transport system, when coming to a foreign country. Assuming that rules from his or her home country also applies in Copenhagen, is in our opinion not sufficient.

As one can read on the Information boards a three zone ticket is valid 75 minutes from the time of purchase as the text on the ticket says. If in any doubt, passengers are welcome to use the yellow call points which also are mentioned on the Information boards. The call points are manned 24

8 zoner	2 timer 30 min	2 timer
Alle zoner	2 timer 45 min	2 timer

Ticket information
 Tickets are available from the ticket vending machines for journeys within Greater Copenhagen and for destinations in Denmark and Scania (Skåne) in Sweden. Major Credit cards and Danish coins can be used. Please read more about different types of tickets below and on www.m.dk.

Tickets
 A valid ticket allows you to use bus, other trains and Metro.

Fare Zones
 Greater Copenhagen area is divided into zones. The longest trip with the Metro (from Vanløse to Copenhagen Airport) costs 3 zones.

How to buy a ticket:

- The red zone on the map shows where you are now
- Find the destination zone
- Check the chart to find the number of fare zones, your ticket must be valid for
- The most expensive fare zone decides your fare
- The minimum fare is a 2-zone ticket per person

Do you use season card, then the card must cover the zones (marked with white) that you are bypassing or travelling in.

Validity	Tickets	10-trip travel cards
2 zones	1 hr	1 hr
3 zones	1 hr 15 min	1 hr
4 zones	1 hr 30 min	1 hr 30 min
5 zones	1 hr 45 min	1 hr 30 min
6 zones	2 hrs	1 hr 30 min
7 zones	2 hrs 15 min	2 hrs
8 zones	2 hrs 30 min	2 hrs
All zones	2 hrs 45 min	2 hrs

hours a day.

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.

The boards also informs this:

Children

and this if a passen-

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.

ger is in any doubt:

We have contacted our technical department who can confirm what the complainant says, namely that the text on the screen we sent in our reply, was first taken into use in early January 2016. We sincerely regret the mistake.

However, we reiterate our call for the payment of the 4 specific fare evasion tickets as we refer to a previous complaint; 2014-0226, which in our opinion is completely identical to the present case. See below:

Den konkrete sag:

Ved kontrol i metroen den 15. juni 2014 kl. 8.15 kunne klageren ikke forevise gyldig rejsehjemmel, da han havde købt 3-zonersbilletten den 14. juni 2015 kl. 19.15. En 3 zoners billet er gyldig i 1 time og 15 minutter fra udstedelsen, hvorfor billetten var udløbet.

Kontrolafgiften blev derfor pålagt med rette.

Det er ankenævnets opfattelse, at reglerne om billetters gyldighed, som fremgår på engelsk på tavler på stationerne, er kommunikeret tilstrækkeligt tydeligt, og at klageren ikke med rette, uden at have undersøgt dette nærmere, kunne gå ud fra, at reglerne i Frankrig fandt umiddelbar anvendelse i den kollektive trafik i Danmark.

Det bemærkes, at pligten til at betale kontrolafgift ikke er betinget af, om passageren bevidst har forsøgt at unddrage sig fuld betaling, da dette er et område med oplagt mulighed for omgåelse af reglerne om gyldig rejsehjemmel.

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

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When you buy a ticket, the time of purchase is printed on the ticket. Since it is not possible to stamp a ticket at the start of a journey, we do not understand how the complainant can misunder-

stand that the time printed on the ticket, is that very moment from when the ticket is valid. And as this is a 3 zone ticket – valid 75 minutes as explained on the Information Boards...”

På ankenævnets vegne



Tine Vuust
Nævningsformand