

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

**Journalnummer:** 2015-0311

**Klageren:** XX  
1850 Frederiksberg

**CVRnummer:** 21 26 38 68  
Metroselskabet I/S v/ Metro Service A/S

**Klagen vedrører:** Kontrolafgift på 100 kr. for medtagelse af cykel i spærretiden.

**Parternes krav:** Klageren ønsker annullering af kontrolafgiften.  
Indklagede fastholder kontrolafgiften.

**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 A/S v/Metro Service I/S berettiget til at opretholde kravet om klagerens betaling af kontrolafgiften på 100 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.

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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 på [www.domstol.dk](http://www.domstol.dk), [www.advokatsamfundet.dk](http://www.advokatsamfundet.dk) og /eller eget forsikringssselskab om eventuel forsikringsretshjælp

## **SAGENS OMSTÆNDIGHEDER:**

I metroen er det på hverdage i tidsrummet kl. 07:00 - 09:00 og kl. 15:30-17:30 ikke tilladt at medbringe cykler i metroen i den såkaldte spærretid.

Klageren rejste med metroen den 2. december 2015, og forinden havde han købt en cykelbillet til sin medbragte cykel. Efter metroen havde forladt Lindevang st., blev klageren billetteret. Da der var spærretid for cykler, blev han kl. 16:34 pålagt en kontrolafgift på 100 kr.

Den 4. december anmodede klageren Metro Service om annullering af kontrolafgiften med bl.a. den begrundelse, at han ikke var bekendt med reglerne på dette område, og at han ikke vil betale kontrolafgiften, da der intet sted på cykelbilletten fremgik, at der er spærretid for cykler.

Den 7. december 2015 fastholdt Metro Service deres kontrolafgift med følgende begrundelse:

” 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 before boarding the train.

It is the customer’s own responsibility to make him- or herself acquainted with our business terms, including being aware that bicycles are not allowed in the Metro during peak hours on weekdays. This information is available on our information walls and over our audio systems in both trains and on stations.

Bicycles are not allowed in the Metro from Monday to Friday between 7 and 9 am and 3.30 and 5.30 pm.”

.”

## **ANKENÆVNETS BEGRUNDELSE:**

Det fremgår af de fælles rejeregler, at det ikke er tilladt at medbringe sin cykel i metroen i tidsrummet mellem kl. 15:30 - kl. 17:30.

Ankenævnet lægger til grund, at kontrolafgiften, som var udstedt, efter at klageren var blevet billetteret, blev påbegyndt udstedt kl. 16.34, som det fremgår af den elektroniske log, hvilket var i spærretiden.

Klageren rejste således med sin cykel i spærretiden, hvilket efter rejsereglerne punkt 2.6. indebærer en kontrolafgift på 100 kr., uanset om der er købt billet til cyklen.

Kontrolafgiften blev dermed pålagt med rette.

Ankenævnet finder, at det er skiltet tilstrækkeligt tydeligt over for ikke-dansksprogede passagerer, både ved købet af billetten, på tavlerne på perronen samt ved udkald over højtalerne, at man ikke må medtage cykel i tidsrummet mellem kl. 15:30 – 17:30.

Der findes i øvrigt ikke at foreligge sådanne særlige omstændigheder, at klageren skal fritages for betaling af den pålagte kontrolafgift.

## 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 i punkt 2.6. 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 perronen forlades.

Som kunde uden gyldig rejsehjemmel betragtes også kunder, der benytter kort med begrænset tidsgyldighed (f.eks. pensionistkort) uden for kortets gyldighedstid, eller hvis andre rejsetidsbegrænsninger ikke overholdes (f.eks. for hvornår cykler må medtages).

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

Vedrørende cykler fremgår følgende i pkt. 4.3 Cykler :

"Cykler kan medtages i tog, metro og havnebusser. Cykler kan medtages i alle busser bortset fra de buslinjer, der specifikt fremgår af "Oversigt over buslinjer, som ikke medtager cykler", på [www.moviatrafik.dk/cykler](http://www.moviatrafik.dk/cykler). Der er tidspunkter, hvor cyklen ikke må medbringes, jf. pkt. 4.3.1. Hvis der er tidsbegrænsninger, er det ikke tilladt at færdiggøre sin rejse med cyklen, selv om kunden er steget på, inden tidsbegrænsningen startede. Der kan medtages 1 cykel pr. kunde. Cyklen kan kun medbringes, hvis pladsforholdene tillader det. Det er personalet, som vurderer, om der er plads. Der kan kun medbringes almindelige to-hjulede cykler og således ikke ladcykler, tandemcykler, påhængsvogne, Segways og lign. Der er dog undtagelser for tandem-cykler, jf. pkt. 4.3.2. Køretøjer, der drives med benzin eller andet letantændeligt brændstof, må heller ikke medtages. Ladcykler kan dog medtages i DSB Øresunds tog over Øresund mellem stationerne Københavns Lufthavn, Kastrup og Hyllie. Børnecykler betragtes som legetøj, hvis de ikke overstiger målene for håndbagage, og hvis der er mindst 1 betalende kunde med. Det er gratis at medtage cykler i S-tog, havnebusser og visse lokalbanetog i Hovedstadsområdet (Frederiksværkbanen, Nærumbanen, Gribskovbanen, Hornbækbanen og Lille Nord). For øvrige tog, busser og metro betales i henhold til priser på selskabernes hjemmesider.

4.3.1 Supplerende regler om cykler (for metroen)

Cykler må ikke medbringes på hverdage mellem kl. 7.00 og 9.00 samt mellem kl. 15.30 og 17.30. I juni, juli og august er det tilladt at medbringe cykler i hele driftstiden."

## PARTERNES AGRUMENTER OVER FOR ANKENÆVNET:

### Klageren har anført, at:

"I was not aware of the rule change about no bicycles on the Metro during certain hours on weekdays and was only making use of the Metro as my bicycle had a puncture and I was going to be late for my Danish classes. I purchased a bicycle ticket at Flinthom station and at no point in the

transaction was it stated that the ticket could not be currently used. The ticket itself also states that it is valid for 2 hours from 16:45 on 02/12/2015. I do still have the ticket as evidence. Please also note that the purchased ticket was ONLY a bicycle ticket, not a travel ticket as I made use of my Rejsekort for the travel costs.

Although the feedback from Metro Service is that it is my responsibility to be aware of the rules, they also state that I am responsible for ensuring that I have a valid ticket before entering the train. This is exactly my complaint whereby I was in possession of a valid bicycle ticket that states that it is valid for 2 hours from 16:45 on 02/12/2015. Metro Service tickets dispensers shouldn't issue a ticket if it isn't actually valid and if they do choose to dispense tickets, the validity date/time/duration should be in accordance to their rules!!!

I will not pay a fine after making a payment for something that states its validity and I then get fined for using it."

### **Indklagede har anført, 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 for adults and 100 DKK for bicycles. This basic rule is a premise for the self-service system used in the Metro. This information can be found in the Common Travel Regulations found on [www.m.dk](http://www.m.dk) as well as on the Information walls on all stations. The Information walls are all in both Danish and English language.

In the case in question, the complainant is met by a steward inspecting tickets on the 2nd of December 2015 at 16.34. The complainant is bringing his bicycle and presents a ticket for himself as well as for the bike. But as there is a curfew for travelling with bikes in the metro all weekdays between 7.00 – 9.00 am and 15.30 – 17.30 pm a fare evasion ticket is issued, according to the travel regulations.

In his complaint the Complainant writes that as he was able to buy a bicycle ticket he should be allowed to bring his bike at all times or otherwise the tickets machines should not issue bicycle tickets in the curfew.

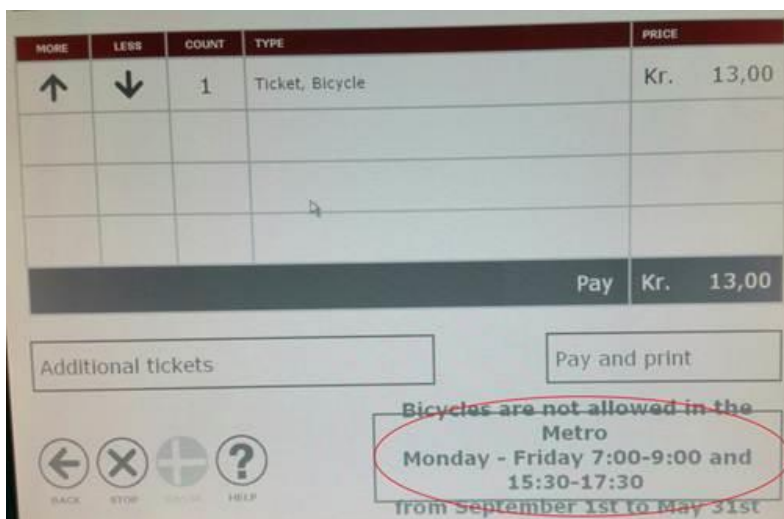
On all metro stations there are information boards in Danish and English. These boards also inform about travelling with bicycles in the Metro, see inserted photo from Flintholm station.



### 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.

If one buys a bicycle ticket in the ticket machine during curfew a box appears on the screen, telling that passengers are not allowed to bring their bicycles at specific times of the day (see below). Furthermore, during the curfew, there are speaks in Danish and English, and the Passenger Information Displays (the signs informing about arriving trains etc.) also informs about the bicycle curfews in Danish and English.



To equip all ticket machines with a software that would make it impossible to buy certain types of tickets at certain times will be disproportionately costly. In turn, a warning message will appear on the screen when you buy the ticket, there is information boards on all metro stations and there are loudspeaker announcements and text on the PIDs on bike curfew, why we think that we make every effort to inform passengers of the same."

### Klageren har hertil anført:

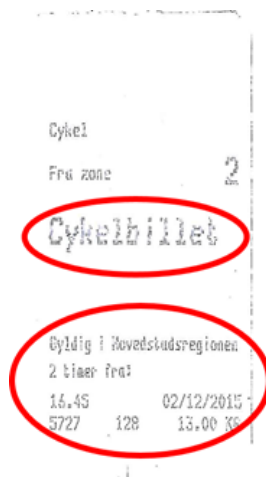
“Once again, the response from Metro Service has highlighted all their expectations from the public regarding self-awareness and self-service, yet they also contradict themselves as per the extracts below:

- 1) “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 this case, a **VALID** ticket had been **purchased** and **presented** (see ticket below)
- 2) “In cases where a valid ticket cannot be presented upon request, the passenger must accept a fine...”
  - Again, for this point, a **VALID** ticket had been **purchased** and **presented** (see ticket below)
- 3) “But as there is a curfew for travelling with bikes in the metro all weekdays between 7.00 – 9.00 an and 15.30 – 17.30 pm a fare evasion ticket is issued, according to the travel regulations.”
  - If Metro Service have chosen to implement a curfew between 15:30-17:30, their own ticketing system should not be generating tickets that state their validity between these time periods (see ticket below)
- 4) “To equip all ticket machines with a software that would make it impossible to buy certain types of tickets at certain times will be disproportionately costly. In turn, a warning message will appear on the screen when you buy the ticket, there is information boards on all metro stations and there are loudspeaker announcements and text on the PIDs on bike curfew, why we think that we make every effort to inform passengers of the same.”
  - If Metro Service have made the decision to implement the curfew on bicycles between certain days/hours, as the service provider, it is their responsibility to ensure their own systems can cater for this rule. If their system cannot cater for the rules that they themselves have chosen to implement, the public should not be held responsible/liable for this and the rule should not be implemented.

In summary, it is very important to note that I made use of a Rejsekort for my own travel and the ticket that I purchased was solely a bicycle ticket. I paid money for a ticket specifically to bring my bicycle on to the Metro; I was then issued a bicycle ticket by the Metro ticket dispenser that states that it is valid for 2 hours and was then subsequently fined for taking my bicycle on to the Metro well within the 2-hour window. Again, if Metro Service have made the decision to implement the curfew on bicycles between certain days/hours, as the service provider, it is their responsibility to ensure their own systems can cater for this rule. If their system cannot cater for the rules that they themselves have chosen to implement, the public should not be held responsible/liable for this and the rule should not be implemented.

Metro Service make statements regarding the responsibility of the public for self-awareness, yet the fact that Metro Service **knowingly accept a payment** for a ticket, then issue the respective ticket that specifically states the duration and date of validity and **then claim that the same ticket is not valid** within this specified period, is blatant deception and the legality of this situation will have to be investigated and reviewed.

Based on the information above, I maintain that the fine will not be paid. Could you therefore please respond accordingly in order for the next course of action to be determined.



### Indklagede har til dette anført følgende:

"We have noted the complainant's recent remarks, but does not believe that there is provided any new information.

In his first complaint to Metro the complainant writes, that he '*was not aware of the rule change about no bicycles on the Metro during certain hours on weekdays*'.

But the curfew on bicycles is not a new or changed rule, it has been like this for the latest ten years.

As we have already stated in our previous answer, we believe that we make every reasonable effort to draw attention to the bike curfew, with both loudspeaker messages, signage and a warning text on the screen if you buy a bike ticket in the curfew.

As also mentioned earlier, it will not be possible to completely close the purchase of bicycle tickets in the curfew. Besides the already mentioned arguments, it should also be possible to buy a bike ticket before the curfew expires if a passenger wants to take a bike on board just as the curfew expires.

We still believe that we do everything that can reasonably be required to point out that one cannot take a bike on the Metro in the curfew and reiterate our call for the payment of the fine on kr. 100, -"

På ankenævnets vegne

Tine Vuust  
Nævnformand