

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

**Journalnummer:** 2014-0188

**Klageren:** XX  
2000 Frederiksberg

**Indklagede:** Metroselskabet I/S v/Metro Service A/S  
**CVRnummer:** 21 26 38 34

**Klagen vedrører:** Kontrolafgift på 750 kr. Udstedt til rette vedkommende?

**Ankenævnets  
sammensætning:** Nævnensformand, landsdommer Tine Vuust  
Bjarne Lindberg Bak  
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**SAGSFREMSTILLING:**

**Klageren reklameret til indklagede:** Den 2. februar 2014

**Klagegebyr modtaget i ankenævnet:** Den 11. juni 2014

**Sagens omstændigheder:**

Klageren er portugisisk statsborger men med fast adresse i DK og dansk sygesikringsbevis.

Der blev den 28. januar 2014 kl. 10:26 udskrevet en kontrolafgift for manglende rejsehjemmel i metroen til klagerens navn. Stewarden noterede "intet forevist" på den elektroniske kontrolafgift. Ved kontrollen tog stewarden et billede af det foreviste portugisiske identitetskort med foto lydende på klagerens navn. På den elektroniske kontrolafgift fremgik klagerens adresse i DK.

Den 2. februar 2014 blev Metro Service via deres elektroniske klageformular anmodet om annullering af kontrolafgiften, hvori følgende blev gjort gældende:

"  
Dear Metro, I got a fine [redacted] I am from Portugal and have been 1 week in Copenhaga helping my sick brother and his work. Unfortunately one day i forgot to click the card but i have proof that it was not intentional, i always punched 2 times a day during all other days when i traveled from his house to his office since i am onest and would never do that. Would you be able to apologise my mistake if i send you that proof: [redacted]  
"

Anmodningen var sendt fra en e-mailadresse, som indeholdt klagerens to efternavne samt fødselsår. Metro Service fastholdt den 4. februar 2014 kontrolafgiften i e-mail til den nævnte e-mailadresse.

Metro Service henviste til selvbetjeningssystemet, hvorefter det er passagerens eget ansvar at være korrekt billetteret inden påstigning, samt til at:

*"Our members of staff have been instructed to give the passenger a reasonable amount of time to find his or her ticket or clip card. If the passenger is unable to present a valid ticket, the passenger must accept the issue of a fine.*

*We do not accept subsequent presentation of tickets or clip cards, as these are not personalised with a name or a photograph of the ticket holder."*

Kontrolafgiften blev ikke betalt, hvorefter Metro Service den 13. marts 2014 fremsendte en betalingspåmindelse med et rykkergebyr på 100 kr. til klagerens navn på en adresse på Frederiksberg, som klageren i følge CPR-registeret er registreret på, og som også er anvendt i klagen til ankenævnet.

Den 15. marts 2014 skrev klageren til Metro Service via deres elektroniske klageformular fra en anden e-mailadresse end den, der tidligere var anvendt og oplyste følgende:

*"Hi I received a letter at home about a "intet firevist" ticket from the metro (850 DKK). This is a mistake since I was never had any issue when approached by one inspector. Only time was about 2 year ago in a trip between forum and Frederiksberg since I had my wallet & monthly card at my office, but that was paid. I used the metro during part of the winter but never failed paying ticket. I am a responsible citizen and pay my dues. Can you check it this mistake? Tak"*

På den baggrund sendte Metro Service ham en tro-og loveerklæring, den 4. april 2014 om, at han ikke havde rejst med metroen uden gyldigt kort eller billet, og at den person, der havde modtaget kontrolafgiften, havde misbrugt hans generalia. Klageren underskrev erklæringen den 9. april 2014.

På baggrund af at underskriften på erklæringen sammenholdt med underskriften på kvittering for modtagelse af kontrolafgiften meddelte Metro Service den 8. maj 2014, at de ikke kunne udelukke, at det var klageren, som havde modtaget kontrolafgiften den 28. januar 2014. De fastholdt deres krav på betaling af kontrolafgiften samt rykkergebyret på i alt 850 kr.

#### **PARTERNES KRAV OG BEGRUNDELSER:**

**Klageren:** Ønsker kontrolafgiften annulleret og har til støtte herfor gjort følgende gældende:

"ON APRIL 4 2014, I got a letter from Metro claiming that I did not pay one ticket on Jan 28 2014. This is not true.

I can only assume this is a mistake or that someone had my CPR card number details, and I would consequently ask fairness to be established by dismissing the fine.

I reply to metro explaining that, but they don't believe me according to a consequent response.

Please consider the following documents under my defense:

POLICE REPORT

Attached is a police report. Since I did not get a fine by any ticket inspector, I can only conclude that someone has a copy of my CPR number. This is obviously a dangerous situation to be in, since someone may be using my identity wrongfully. I consequently filed this police report.

MY PHOTOS

Metro claims I got a ticket, and i believe that's a mistake. Consequently, I request that Metro proves that person was me, by analysing video footage of the surveillance cameras. I also attach my photo for reference, and will be available to have more photos taken for analysis if needed.

METRO PAYMENT

I also attach a few entries on my bank statement. You may see that I use the metro during winter months, sporadically and with a 10-trip ticket card since I only use it sporadically when it rains or when i do not run back home (2 stations away). I believe this proves that I am a user of the metro but a responsible one that pays my dues. Unfortunately, because I don't save receipts, only my bank's account statement may serve as evidence. There is no logic if Metro claims that someone would pay this amount yearly but then risk one trip without ticket.

Table 1

Dato	Tekst	Beløb
05-05-2014	M Islands Bryg TVM	-150
07-04-2014	M Fr.berg TVM	-150
30-01-2014	M Fr.berg TVM	-150
23-01-2014	M Fr.berg TVM	-150
09-01-2014	M Fr.berg TVM	-150
08-01-2014	M Nørreport TVM	-150
13-12-2013	M Fr.berg TVM	-150
05-12-2013	M Nørreport TVM	-150
04-12-2013	M Fr.berg TVM	-150
01-11-2013	M Nørreport TVM	-24

In conclusion:

I am a complying and hard-working citizen that always pays it dues. The only time I got a fine on the metro was one day that i forgot my wallet in my office, ~3 years. I paid it accordingly when asked to.

I do understand if this is some kind of mistake but I don't appreciate the fact that I am considered guilty without proof. I would not like to feel that complying citizens need to pay for a mistake or abusive travel by others, specially when I often observe ticket inspectors clearly ignoring some of those that abuse.

Consequently, I would like to ask Metro to analyse their video vigilance cameras to see if I got effectively any ticket. Only that, and the above may prove my innocence. "

**Indklagede:** Fastholder kravet om betaling af kontrolafgiften og har til støtte herfor gjort følgende gældende:

“In this case the complainant has identified himself – in the ticketing situation - by showing a citizen card from Portugal, which includes both picture and signature.

The photo on this citizen card is similar to the photo the complainant has included in his complaint to the Ankenævnet, and we also find the signature on the citizen card similar to the signature on the receipt signed in the ticketing situation.

We do not find it relevant that the complainant has bought several clip card. “

### Hertil har klageren anført:

“I initially believed that my CPR number was hijacked but I see that it was my Portuguese ID card.

While I recognise the ID to look like mine, I don't recognise the hand-writing and signature: they seem a attempt to copy my signature that is shown on the ID, but a cheap attempt.

There seems to exist an email sent by a brother in Portugal that I don't have. I have only 2 sisters and I can provide proof of that if needed. The email isn't valid as far as I understand, and it's certainly not mine. My only email addresses are  and previously ani-

I am obviously concerned about the seriousness of this and understand why Metro believes it was me although they have no proof that this is not a case of identity theft. I would ask you and the metro personnel to analyse it under that perspective. I am a complying citizen and would never do what I'm being falsely accused of.

Consequently, I have to file a second police report and let my embassy know that I may be the target of identity theft, canceling my ID card. I am also asking the embassy to provide me with legal advise on what to do next due to it.

As you may understand, replacing a legal document is more costly than paying for the ticket itself. That reason alone proves that it wasn't me.

I am innocent although it seems that Metro claims otherwise. Metro didn't reply with my request to analyse their video security cameras, which would prove it's not me. I suggest that you match video evidence since you'll find that a different person used a copy of my ID.

Unfortunately, my emails don't help me proving I was not near the Metro on that approximate date. If this issue needs to go to court, I will ask my lawyer to try to get my mobile records from my telecom if possible since that may be the only way of me proving that it was not my fault.

Therefore, as a complying citizen that uses the metro according to the rules, I keep my complain and would like to get my case analysed.”

**Ankenævnets sekretariat anmodede den 4. september 2014 klageren om at indsende kopi af ansøgningen om nye dokumenter og en kopi af politirapport(er).**

**Hertil svarede klageren den 14. september 2014:**

"I've been placed for 1.5 months abroad and have my documentation in Copenhagen storage. I friend couldn't find and retrieve the documents after i asked him.

Therefore, I can only ask you to base your decision on the docs already sent to you, including the first police report.

I asked, SINCE DAY ONE, to see the video footage, to prove it was not me. That alone proves what I've said but the metro company conveniently refused to do so so far, dragging this process needlessly.

I urge you to analyse that single evidence since it will save you time.

Unfortunately, if that's not sufficient, I'll have to bow to this long-standing bullying from the metro company since I can't afford to fight this un-even situation further. Honesty and innocence does not matter in this situation."

### **Hertil har Metro Service anført:**

"As far as we can see the complainant has not presented a police report as asked for by the Board off the Appeal

- 1) According to the Danish law we are not allow to use the video footage from the station when handling customer inquiries. The video material is on request handed over to the police in connection with investigations. "

### **Herefter indsendte klageren politirapporten fra 10. juni 2014 og anførte følgende:**

"1) The initial police report was sent via email. Please confirm that you got it. The following communication explained my situation and I have nothing to add.

2) Do you really see this as a "customer inquiry"? I have nothing to do with this issue and have been harassed all along. The police told that they'd only write down the report, when i reported the stolen id, they didn't requested any investigation. I don't care if there's an investigation or not, I only want to get rid of this harassment since i have nothing to do with it.

The Metro can keep the video, I don't want it. I just want the metro people to see that's not me. Which part of that is hard to understand?!? Whoever is responsible for this harassment can walk to a different department in their company and see with their own eyes that I have nothing to do with it.

I have nothing to add, as mentioned before. I am currently traveling and am living abroad in the US for a couple of months. I can't do anything about this situation.

I'm sorry you have to intermediate a situation like this, but the constant persistence is annoying when the Metro could just check it by themselves. "

### Anmeldeskvittering

Journalnr:

Tidspunkt: 10/06-2014-12 16 Henv.: Personlig

Gerningssted/adr: I Metroen, Ukendt , 0000 - Ukendt Adresse

Gerningstidspunkt: 28/01-2014-12.00

Sagens art: Undersøgelse - hændelse uden sag

Sagens genstand: A/Fs navn og personnummer er blevet oplyst i forbindelse med udstedelse af afgift for manglende billet i Metroen. A/F har ingen mistanke til hvem der kan være i besiddelse af hans personlige oplysninger. A/F har haft kontakte med Metro Service en gang tidligere, men de fastholder at han skal betale bøden. Forholdet anmeldt til politiet med henblik på forevisning i forbindelse med ny indsigelse til Metro Service, idet A/F ikke har kørt den tur med metroen, ej heller haft kontakt med en steward. A/F vejledt. Intet yderligere foretaget.

Kvitteringen gælder kun for sagens anmeldelse til politiet.

### Hertil har Metro Service anført:

" February 2<sup>nd</sup>, 2014 the complainant contacts us via our homepage about the fare evasion ticket (Bilag 1 in our mail of June 22<sup>nd</sup>, 2014). At this time the only way the complainant could know about the fare evasion ticket is, if he has been there and received the original fare evasion ticket from the steward.

We have at this time not contacted him regarding the issued fare evasion ticket.

At the time of ticketing the complainant has shown a personal card as ID. This card includes a photo (PDA billede included in our mail of June 22<sup>nd</sup>, 2014).

Furthermore the signature on this card is – as we see it – totally similar to the one on the Kvittering (included in our mail of June 22<sup>nd</sup>, 2014).

Finally we notice that the complainant do not take contact to the police until the day he contacts the Board of Appeal. The police report is dated 10. juni 2014.

Based on the above we do not find reason to believe that it was not the complainant who was issued the fare evasion ticket January 28<sup>th</sup>, 2014, and this is why we maintain our claim of the fare evasion ticket together with the reminder fee (Betalingspåmindelse 1), a total of DKK 850,-. "

### ANKENÆVNETS BEMÆRKNINGER:

#### **Retsgrundlaget:**

Ifølge § 2, stk. 2, i lovbekendtgørelse nr. 969 af 08. oktober 2009 om lov om jernbaner, gælder loven også for metroen. Af § 23 fremgår det, at transportministeren fastsætter regler om jernba-

nevirksomhedernes adgang til at opkræve kontrolafgift og ekspeditionsgebyr for passagerer, der ikke foreviser gyldig rejsehjemmel (billetter og kort).

I henhold til § 4 i bekendtgørelse nr.1132 om kontrolafgifter af 08. september 2010, fastsætter jernbanevirksomheden bestemmelser om kontrolafgift i forretningsbetingelserne.

Fra Metroens rejseregler (forretningsbetingelser):

### **Billetkontrol og misbrug**

Alle passagerer skal have gyldig billet eller kort inden påstigning. Billetten skal opbevares under hele rejsen, og indtil Metroens område forlades. Der er dog ikke krav om at personer, der har et andet ærinde på metrostationerne og ikke skal rejse med Metroen, skal have gyldig billet. Billetter og kort skal fremvises på forlangende. Billetkontrol kan ske både under rejsen, ved udstigning og på metrostationen efter afsluttet rejse. Metro Stewarder kan bede om at se legitimation i tilfælde, hvor der er begrundet tvivl om

- personens alder ved billetkontrol af børnebillet
- personen rejser på en anden passagers periodekort
- personens identitet er korrekt

Hvis man ikke kan fremvise gyldig billet eller kort under rejsen, i forbindelse med udstigning eller på Metrostationens område efter at have afsluttet rejsen, udstedes en kontrolafgift. Kontrolafgiften er et girokort, som kan betales via bank/netbank eller på posthus.

Kontrolafgiften er samtidig billet til videre rejse til den metrostation, passageren oplyser som bestemmelsesstationen. Se særlige regler for cykler under afsnittet Cykler. Kontrolafgiften er pr. januar 2013 på 750 kr. for voksne, 375 kr. for børn, 375 kr. for hunde og 100 kr. for cykler.

For rejsende, der har checket ind ved rejsens start; men ikke foretaget check ind ved skift til metroen, udstedes kontrolafgift på 50 kr.

Gældende priser og gebyrer kan ses på [m.dk](http://m.dk)

Det følger af bekendtgørelse om lov om renter ved forsinket betaling § 9 b, at for rykkerskrivelser vedrørende fordringer kan fordringshaveren kræve et gebyr, jf. stk. 2, såfremt skrivelsen er frem-sendt med rimelig grund (rykkergebyr). Fordringshaveren kan endvidere kræve et gebyr, jf. stk. 3, for at anmode en anden om at inddrive fordringen på fordringshaverens vegne, såfremt dette er sket med rimelig grund (inkassogebyr). Stk. 2. Der kan kræves et rykker-gebyr på højst 100 kr. inkl. moms for hver rykkerskrivelse, dog højst for 3 skrivelser vedrørende samme ydelse.

### **Den konkrete sag:**

Metro Service skal godtgøre, at kontrolafgiften blev udskrevet til klageren.

I forbindelse med kontrollen den 28. januar 2014 underskrev passageren en kvittering for modtagelse af kontrolafgiften og foreviste et portugisisk identitetskort med foto. På baggrund af de oplysninger, som passageren gav i kontrolsituationen, kunne stewarden desuden udfylde den elektroniske kontrolafgift med klagerens adresse i DK, som ikke fremgik af det portugisiske identitetskort.

Fem dage efter kontrolafgiftens udstedelse blev der sendt en reklamationen til Metro Service fra en e-mailadresse, som indeholdt klagerens to efternavne og fødselsår, hvori det blev anført, at pågældende desværre havde glemt at klippe sit klippekort.

Den 10. juni 2014 - samme dag som klagen til ankenævnet - havde klageren indgivet en politianmeldelse om, at "*hans navn og personnummer er blevet oplyst i forbindelse med [kontrolafgiftens udstedelse]*".

Der blev ikke indgivet politianmeldelse om tyveri af det portugisiske identitetskort, og klageren har ikke efterfølgende indsendt dokumentation for at have søgt ambassaden om udstedelse af et nyt identitetskort.

Der foreligger i sagen tre dokumenter påført underskrift med klagerens navn: kvittering for modtagelse af kontrolafgiften, tro-og loveerklæringen samt identitetskortet. Underskrifterne på disse tre dokumenter er efter ankenævnets opfattelse identiske.

På baggrund af det ovenstående finder ankenævnet, at Metro Service i den konkrete sag har løftet bevisbyrden for, at det var klageren, som modtog kontrolafgiften den 28. januar 2014.

Da kontrolafgiften blev pålagt som følge af manglende billet, blev den pålagt med rette.

Da kontrolafgiften blev pålagt med rette, og da kontrolafgiften ikke blev betalt rettidigt, var Metro Service den 13. marts 2014 berettiget til at sende klageren en betalingspåmindelse med et rykkergebyr på 100 kr.

Ankenævnet træffer herefter følgende

AFGØRELSE:

Metro Service A/S er berettiget til at opretholde kravet om klagerens betaling af kontrolafgiften samt rykkergebyret på i alt 850 kr. Beløbet skal klageren betale inden 30 dage jf. ankenævnets vedtægters § 15.

Da klageren ikke har fået medhold i klagen, tilbagebetales klagegebyret ikke, jf. ankenævnets vedtægter § 26, stk. 4, modsætningsvist.

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.

På ankenævnets vegne, den 21. november 2014



Tine Vuust  
Nævnensformand