

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer:	2016-0190
Klageren:	XX på egne vegne og på vegne af YY England
Indklagede: CVRnummer:	Metroseleskabet I/S v/Metro Service A/S 21263438
Klagen vedrører:	Kontrolafgift på 2 x 750 kr. for rejse uden billet. Forsøgte at købe billet i en rejsekortautomat, der ikke udsteder 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 sit møde den 6. december 2016 truffet følgende

AFGØRELSE:

Metro Service A/S er berettiget til at opretholde kravet om betaling af de to kontrolafgifter på hver 750 kr.

Klageren og dennes medrejsende skal betale beløbet til Metro Service, som sender et girokort eller andre betalingsoplysninger 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 dennes medrejsende var på ferie i København og skulle den 24. juli 2016 rejse hjem fra lufthavnen, hvorfor de tog metroen fra Nørreport st. mod Lufthavnen st. Forinden forsøgte de forgæves på Nørreport st. på gadeniveau at købe to billetter i de to automater.

Imidlertid var det rejsekortautomater, som ikke udsteder billetter, men som anvendes til at optanke rejsekort, checke ind eller ud på rejsekort eller til køb af rejsekort anonymt.

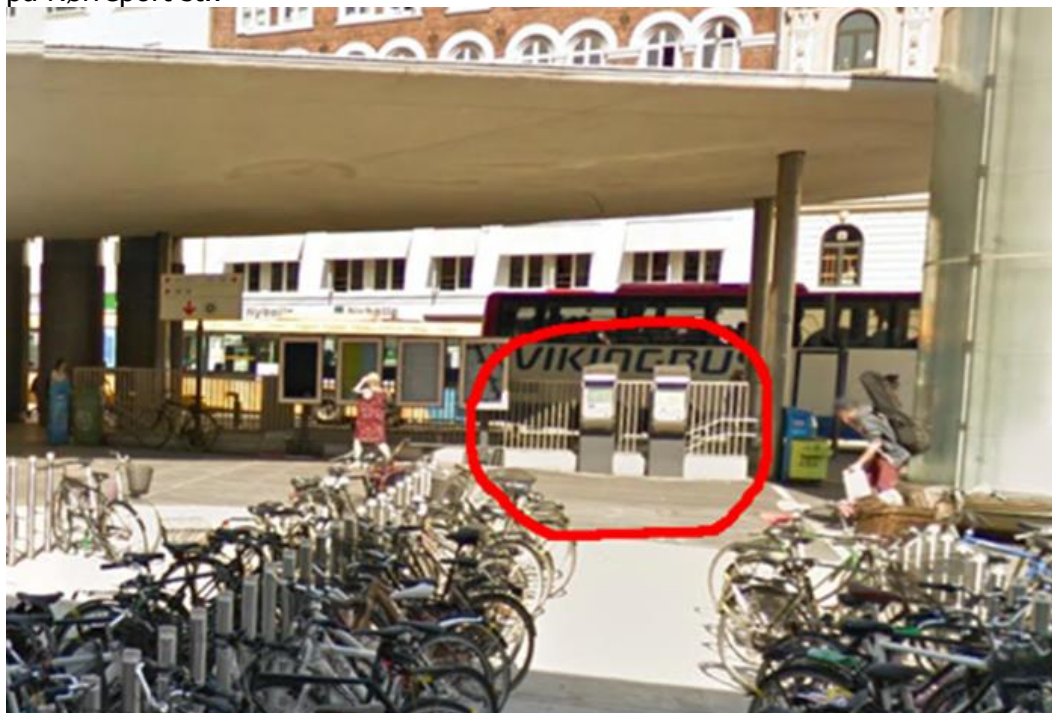
Ifølge klageren frøs skærmen, og der stod en tekst på dansk, som de ikke forstod. Herefter forsøgte klagerens rejsefælle uden held i 20 minutter på forskellige perroner at finde en billetautomat eller noget personale. Da de var bange for at komme for sent til deres flyafgang, steg de på metroen uden billetter, idet de håbede på at kunne købe billetter om bord af noget personale.

Efter at metroen havde forladt Femøren st., var der kontrol af deres rejsehjemmel, og da der ikke sælges billetter om bord på metroen og de ikke kunne forevise nogen billetter, blev de kl. 11:34 og 11:36 pålagt en kontrolafgift hver på 750 kr.

Den 26. juli 2016 anmodede klageren Metro Service om at annullere kontrolafgifterne med henvisning til, at de på Kongens Nytorv st. ikke havde kunnet købe billetter, da automaterne var ude af drift og da de ikke kunne finde personale og var bange for at miste deres fly.

Metro Service fastholdt den 29. august 2016 kontrolafgifterne og anførte, at de havde undersøgt de tekniske logs fra billetautomaterne på Kongens Nytorv st., og at der ikke havde været registreret fejl før eller efter det omhandlede tidspunkt. Desuden henviste de til de gule opkaldspunkter, hvorfra passagererne kan komme i kontakt med personale.

Under den efterfølgende ankenævns sag har klageren oplyst, at de rejste fra Nørreport st. og ikke Kgs. Nytorv st.. Herefter har Metro Service indsendt foto af rejsekortautomaterne på gadeniveau på Nørreport st.:



SEKRETARIATETS BEMÆRKNINGER:

Under sagens forberedelse har sekretariatet stillet klageren og Metro Service spørgsmål om:

- hvor billetautomaterne er placeret på Nørreport st., og om passageren vil passere disse på vej til perronerne fra gadeniveau,
- hvorvidt det er muligt for kunden at vælge sproget "engelsk" på rejsekortautomaten, om kunden informeres om brug af automaten, og om hvilken besked der gives til kunden, når man indsætter et betalingskort i automaten, samt
- hvorvidt klageren tidligere på ferien købte billetter, når de rejste med metroen fra Kgs. Nytorv st..

Klageren har oplyst, at de et par gange havde rejst med metroen fra Kgs. Nytorv st.

Metro Service har indsendt fotos af displayet på automaterne og hvor billetautomaterne befinder sig og har i tillæg hertil svaret, at udover Metros egne billetautomater, er der flere andre automater både på gadeniveau og på vej ned til perronerne, ligesom der er to 7-Eleven butikker på stationen, hvor man kan købe billetter og søge information. Når man står ved rejsekortautomaterne er man kun få meter fra den ene 7-Eleven butik. Sluttelig har Metro Service anført, at det efter deres opfattelse ikke er muligt at gå rundt på Nørreport st. i 20 minutter uden at se en billetautomat.

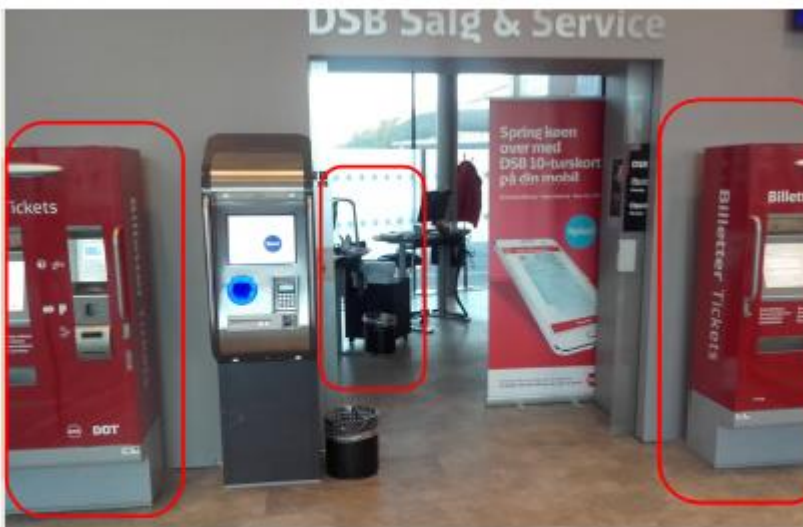
Billetautomater og betjente butikker på Nørreport station.

Ticket vending machines and operated stores at Nørreport station.



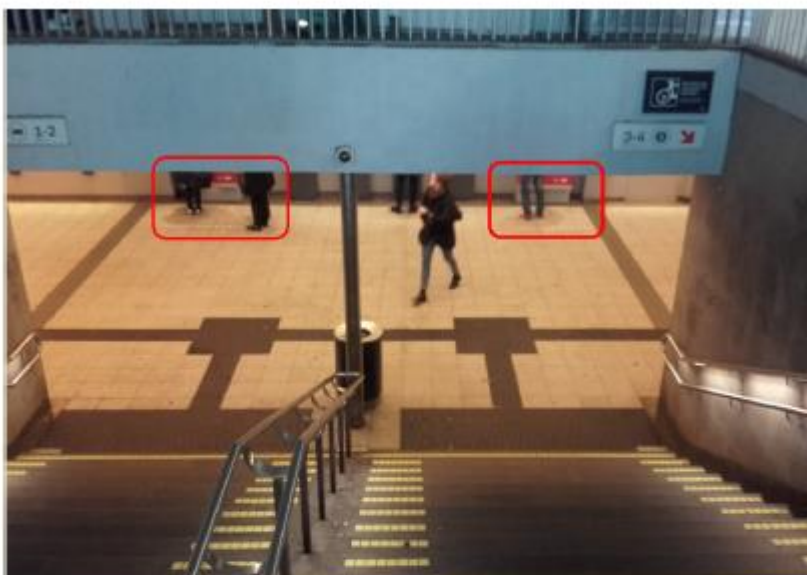
7 - Eleven og en billetautomat, gadeniveau.

7 - Eleven and a ticket vending machine, street level.



2 billetautomater og et bemandet salgssted inde i 7-Eleven.

2 ticket vending machines and a manned sale booth inside 7-Eleven.



2 billetautomater på vej ned mod perroner. (Og 4 rejsekortautomater).

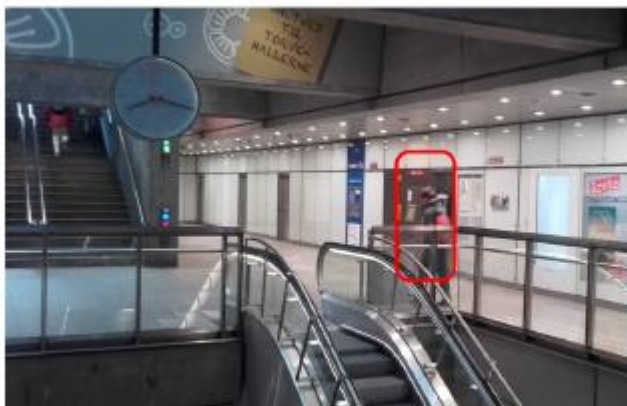
2 ticket vending machines on the way towards platforms. (And 4 rejsekortmachines).





De 2 rejsekortautomater, som klager har taget foto af, og 7-Eleven butikken.

The 2 rejsekortmachines that the complainants have taken photos of, and the 7-Eleven store.



1 af 2 billetautomater på vej mod metroperron

1 of 2 ticket vending machines on the way towards the metro platform.



- og den anden.
- and the other.

Rejsekortautomat:

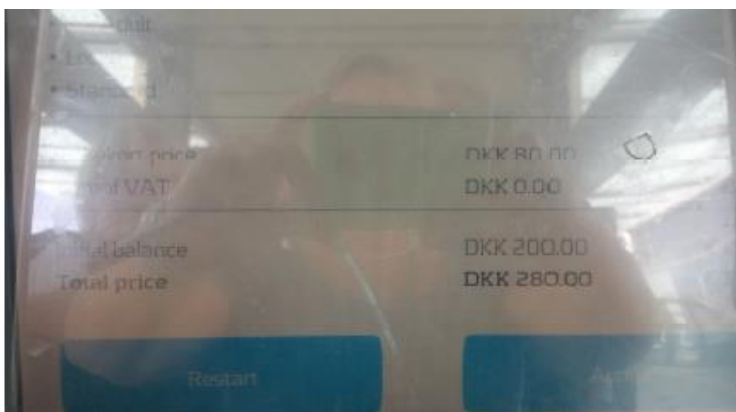
Startskærm på en rejsekortautomat. Start screen on the rejsekortmachine.

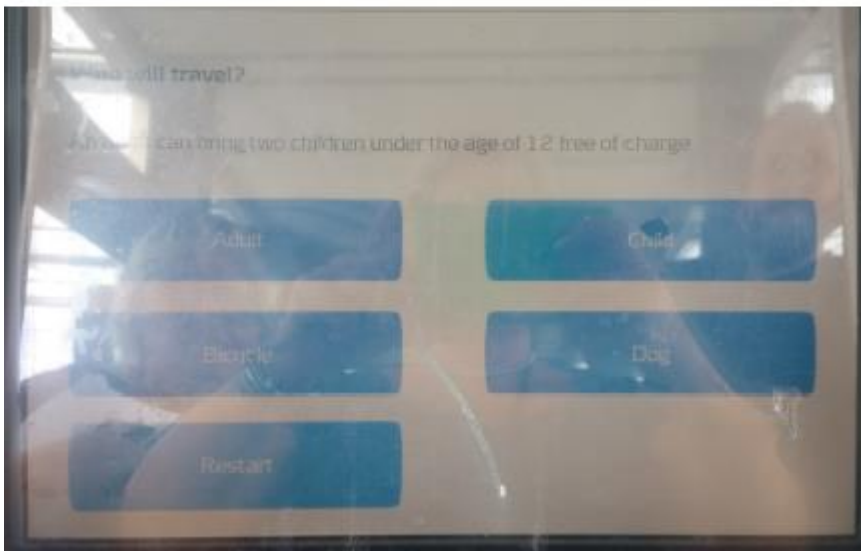


Når man trykker på start får man mulighed for at vælge engelsk sprog. / When pushing Start you get an option of English language.



Efter sprogvalg kommer dette skærbillede. Man kan ikke vælge at købe billet. Man kan enten vælge, at man allerede har et rejsekort, eller at man ønsker at købe et. / After choosing language these are the options. You cannot choose 'ticket', you can only choose if you already have a rejsekort or to purchase one.







ANKENÆVNETS BEGRUNDELSE:

Ved kontrol af klagerens og dennes medrejsendes rejsehjemmel kunne de ikke forevise nogen billetter. Kontrolafgifterne blev herefter pålagt med rette.

Ankenævnet lægger til grund, at klageren og dennes medrejsende forsøgte på gadeniveau på Nørreport st. at købe billetter til metroen i de to rejsekortautomater, hvorfra man ikke kan købe billetter.

Således som sagen foreligger oplyst med fotos, er der efter ankenævnets opfattelse ikke noget ved rejsekortautomaten, som skulle indikere, at man dér kunne købe almindelige billetter.

På de røde billetautomater er anført teksten: "Billetter Tickets". Disse automater befinder sig både på gadeniveau og på vej ned til perronerne. Herudover kan der købes billetter i de to 7-Eleven butikker på gadeniveau.

Herefter har der ikke foreligget sådanne særlige omstændigheder, at klageren og den medrejsende skal fritages for kontrolafgifterne.

Det af klageren anførte om, at hendes medrejsende ledte i 20 minutter uden at finde et sted at købe billetter, kan ikke føre til et andet resultat. Ankenævnet bemærker, at klageren de foregående dage havde rejst med metroen flere gange og derfor måtte anses for at være tilstrækkeligt bekendt med, at billetkøb skulle ske inden ombordstigning. Til det anførte om, at de skulle nå et fly, bemærker ankenævnet, at rejsende skal beregne tilstrækkelig tid til at købe rejsehjemmel og til uforudsete hændelser.

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 følgende:

“My partner and I were on our way to the airport to catch our return 13:30 pm flight on the 24th of July, we arrived at Kongens Nytorv station around 11:30am. There were two tickets machines out side the station; A person was there before us, who tried to purchase tickets on both machines, and then walked away without success. we tried to use machines straight after, both machine screens were frozen stuck with a message in Danish. We tried to press any buttons we could, not respond. There were some texts on the out side of machines, unfortunately we both do not speak and read Danish.

We then walked down into the station platforms,

My partner [yy] went to different platforms trying to find other ticket machines or member of staffs to help while I was waiting for him with suitcases at the platform. There was neither other machines nor staffs available in the station.

We spent about 20 min at the station trying to get our tickets. Walking to the next station would put us in seriously risking of miss our flight.

We eventually decided to board the train without the tickets hoping to purchase our tickets from a ticket conductor on board when the train to airport was approaching the platform.

Subsequently we realized that wasn't an option in Denmark, therefore received our evasion tickets.

We received the first responds from Metro service (An ATM (Azienda Trasporti Milanese) and AnsaldoSTS company) on 29th of august;

In their email stated that technicians informed that both machines were working. However I would like to argue that was not the case, the machines could have crashed at the time. I would like to see detailed data from 10:30 am to 12:30 pm on the 24th of July at Kongens Nytorv station for both machines for proofs, and proof of maintainers proof at the time for both machines.

Secondly, If they could check on their cctv for the same period, they would see both of us standing in front of the machines trying to make it work, my partner [yy] was walking up and down looking for help in the station for another 20 minutes. He was wearing pale grey sweater top with a big olive green backpack.

Call point? One on the machine and yellow one? What is a call point? A phone? I don't think I ever seen a phone like object on the machine and what number do I dial?

They may sound simple enough for local residence, but it would have not made a difference to foreigners who first time visiting the city. Perhaps the English guidance would have helped, however it was not possible to operate the machine with the system crashed. 'Call point' should not and could not be used as an excuse

of failure in customer care.

I deeply believe that those evidences would show that we did make efforts in trying to purchase our tickets that we were left without options, due to ticket machines failure and lack of staff.

We are not ticket dodgers, but someone who simply was desperate to catch our flight on time.

It was not our intention boarding the train without ticket. We had to do so to avoid missing our flight.

We did not deserve the penalty fare and do not appreciate the accusation of dishonesty.

First of all I would like to sincerely apologise that I have made a mistake on the station name.

After seeing the station photo you sent, I realise that I have given the wrong station name all along.

I did a bit research on Google Map, realised that we actually board the train on Nørreport Station. It's one of the stops that is closer to my accommodation, we used Kongens Nytorv more often during our stay, but decided it was easier to walk to the Nørreport Station with suitcases. Please see our accommodation booking for proof of the address.

We came across difficulties with the machines outside the Nørreport Station, please see there's a Google Earth photo of the machines I mentioned attached with this email.

I can not apologise enough for my mistake on given wrong station name. I am truly modified and sorry for wasting your and the technicians time in investigating the wrong station.

Hopefully this shows what may appear simple and straight forward for locals can still be very puzzling for tourists, I am sure Denmark has very certificate transportation system, however it will still take us some time to fully understand the system.

We may have been the clumsy foreign tourists whom didn't know their way around the place. but we have tried our best to obtain tickets within our limitation, our limitation was time and risking missing our flight.

As my previous email stated, that we walked around the station, then my partner [yy] left me on the platform with bags continued to look for alternatives. In all fairness there were no staffs in sight.

We approached the ticket inspectors as soon as they board the train, hoping to purchase tickets from them. they were very understanding and reassured us if we stated our situation we wouldn't be fined.

I hope you can look into the circumstance in our shoes and understand that we had a good reason and every intention of paying. we are more than happy to pay for the single train fares, however I do not think the penalty verdict is fair.

There were no staffs available at the Nørreport station at the time. I am afraid I have no ways of proving it, unless Metro provide CCTV footage, or it's our words against Metro's. We did look for another machines. we were risking missing our flight and offered to pay as soon as the ticket inspector boarded the train. all other reasons as I stated before.

Metro services responds to the photo proves the transportation system is as complicated as it seems to a foreigner.

I am very unhappy about Metro service's accusation of dishonesty and inhuman responses to this situations. I sincerely hope Metro can find their compassion and empathy try to understand that it is matter of confusion and misunderstanding. It is not a wilful misconduct, it is a honest mistake."



Indklagede anfører følgende:

“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 and DKK 375,- for children up to 16 years. 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 at every station. The information boards contain travel information in both English and Danish.

Our Metro staff is trained to issue fare evasion tickets to all customers without a valid ticket. They do not distinguish between an intentional or unintentional mistake. In order to ensure correct travel information passengers should contact our Metro staff either in person or via call points on the station or in the Metro trains.

Call points can be found on all of our ticket vending machines, as well as yellow call points are placed in several other places on every one of 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.

In the case in question, the complainants are met by two stewards inspecting tickets on the 24th of July 2016 at 11:36. Since the complainants had no tickets a fare evasion ticket was issued to each of them, according to the travel regulations.

In their mails the complainants informs that both ticket machines at Kgs. Nytorv did not work. First of all, there are not two, but three ticket vending machines at Kgs. Nytorv station and all three machines were operating without failure. On every single ticket machine there is a button for the passengers to use if in any doubt buying tickets. There are also two yellow call points on Kgs. Nytorv station. One placed next to the ticket machines and one placed on the exact opposite side next to the escalators bringing passengers down to the metro platforms. The information boards contain information about the yellow call points in Danish as well as in English. See inserted photos.



**Henvendelser til Metroens kontrolrum kan ske fra opkaldsstedet
– tryk INFO. Ved akut fare – tryk ALARM.**

Inquiries to the Metro control room may be made from the call point by pressing INFO. In case of emergency, press ALARM.

Kundeservice Customer service		
<p>Metro Service A/S (Metro) T 7015 1615 / www.m.dk</p>	<p>MOVIA (buses) T 3613 1415 / www.moviatrafik.dk</p>	<p>Kontakt Hjælp til din rejse kan fås ved at benytte de gule opkaldssteder, som findes på perroner og i tog eller benytte infokapperne på billetautomaten. Yderligere information findes på hjemmesiden www.m.dk og i folderen "Rejseregler", som findes på stationerne.</p>
<p>DSB (other trains than Metro) T 7013 1415 / www.dsb.dk</p>	<p>Rejsekort T 7011 3333 / www.rejsekort.dk</p>	

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.

We have contacted our technical department again, which again confirms that there was no error on the machines at Kgs. Nytorv station that day / time. We have attached the mail from the technical department as a pdf file. The technical print shows that there was numerous transactions on all three machines.

Furthermore, that because Kgs. Nytorv is a busy station with many travelers including tourists, the station is manned by metro staff every day between the hours. 07:00 to 21:00.

The complainants request that we review the surveillance recordings. However, this is not an option. The only authorized to look at surveillance footage is the police and they only request the extradition of recordings if there is assumption about events of interest to the police.

As we thus believe we have presented proof that all three ticket machines worked, and since we are of the opinion that there were several ways in which the complainants could have been helped to purchase tickets before they boarded the train, we reiterate our call for payment of the two fare evasion tickets of each DKK 750, -, a total of DKK 1500, -

The photo in the mail from the complainants showing Nørreport station street level did not show when we read the mail at first, but now we have seen the photo and we therefore have the following additional comments:

The machines shown in the picture from the complainants are not ticket vending machines. Those machines are for reloading rejsekort, checking ones rejsekort account, in- and out checking of rejsekort and to buy rejsekort anonymous. There are no text on those machines indicating that they are a place to buy tickets.

We are sorry if the complainants tried to purchase tickets from non-tickets machines, but the tickets machines on Nørreport station were working, and so were the call points to use getting help if needed. In addition to that, there were also metro staff present at Metros part of Nørreport station.

The above taken into consideration as well as our previously submitted responses, we maintain our claim for payment of the two fare evasion tickets á DKK 750 total DKK 1.500,-

Regarding Metro staff Nørreport station is manned by our people seven days a week between the hours 7:00 to 20:00. Of course, situations may arise of such a character that the staff at Nørreport must be called off, but it happens very rarely and it has also not been the case on the specific day / time.

In support of the claim, we've included an excerpt from the Control Room's logbook. The common alarm (fællesalarm) described in the logbook (HVAC) alleges common errors in the ventilation system and involve only technical personnel.

Metro Service

Søg filter

Fra dato: 24-07-2016	Til dato: 24-07-2016	<input type="button" value="Søg"/>
Operator: All	Kun Sikkerhedsrelateret handling: <input type="checkbox"/>	
Kun handover: <input type="checkbox"/>	Kun MD: <input type="checkbox"/>	<input type="button" value="SA"/>
Kun SAP: <input type="checkbox"/>	Kun Fracas: <input type="checkbox"/>	
Stations Skifte: <input type="checkbox"/>	Kronologisk: <input checked="" type="checkbox"/>	

Enter text to search...

#	OPE	Tid	Tekst
▣	24-07-2016	sondag	(MD=17 af 17)

#	OPE	Tid	Tekst
		10:21	NBA: 750V kørestrøm koblet UD på CMC manuelt område
		10:39	NBA: Overdrager til CRS
		10:45	NBA: TD2 tilbage
		11:09	NBA: LGP - HVAC 2 fællesalarm høj prioritet -SAP:10395799
		11:09	JGR: Tog ikke registreret KHC2
		11:12	NBA: AMB - HVAC 1 fællesalarm høj prioritet -SAP:10395800
		11:15	NBA: FOR - HVAC 1+2 fællesalarm høj prioritet -SAP:10395801
		11:28	NBA: 750V kørestrøm koblet IND på CMC manuelt område
		11:30	NBA: 750V kørestrøm koblet UD på CMC manuelt område

Hertil anfører klageren:

“Thanks for the Logbook, in fact the data shows the staff was in the control room busy fixing ventilations. perhaps thats the reason why he/ she was no where to be found.

If he / she stood at the entrance, we’d got help straight away, It was a busy day with a lot people walking about in the station, shouldn’t the staff stay where they most easily be found?

We did walked around trying to find a help, But We would miss our flight if we waited around any longer.

we could easily get off the train as soon as we saw the ticket inspector if we were wishing to skip the tickets. But we did not, we waved the ticket inspector as soon as we saw them board the train, we offered to buy tickets on the spot.

I understand now that we can not buy tickets o the train, but our effort should not be dismissed.”

På ankenævnets vegne



Tine Vuust
Nævnetsformand