

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer: 2013-0278

Klageren: XX
Sverige

Indklagede: Metroselskabet I/S v/Metro Service A/S
CVRnummer: 21293438

Klagen vedrører: Kontrolafgift på 750 kr. for rejse på billet, som ikke var gyldig i metroen

**Ankenævnets
sammensætning:** Nævnensformand, landsdommer Tine Vuust
Bjarne Lindberg Bak
Ingrid Dissing
Lise Bjørg Pedersen
Torben Steenberg

SAGSFREMSTILLING:

Klageren reklameret til indklagede: Den 11. og 13. august 2013

Klagegebyr modtaget i ankenævnet: 16. september 2013

Sagens omstændigheder: Klageren, som bor i Sverige, deltog i Copenhagen Fashion Week og rejste til København med en indkøber den 9. august 2013. De tog Øresundstoget fra Malmø til Ørestad, hvor de skiftede til Metro for at køre til Forum St.

Som billet medbragte de en adgangsbillet til Copenhagen Fashion Week, der var gyldig i perioden 8.-10. august 2013. På tilmeldingen stod anført nederst: "ØRESUNDSTOG. This ticket also allows you to use the Øresundstog."

Ved kontrol af deres rejsehjemmel efter Bella Center st. blev de pålagt en kontrolafgift på 750 kr. for manglende gyldig billet, idet billetten ikke kunne anvendes i Metroen.

Den 11. august 2013 skrev klageren en klage via mailadressen m@m.dk, som er Metroselskabets mailadresse, og den 12. august 2013 sendte hun en klage via Metro Services klageportal. Heri gjorde hun gældende, at hun flere gange var blevet oplyst, at adgangsbilletten var gyldig til Metroen, og at de ikke var de eneste som troede dette, samt at de ikke havde intentioner om at snyde.

Den 10. september 2013 fastholdt Metro Service kontrolafgiften med henvisning til, at som det stod anført på billetten, var den var gyldig til Øresundstoget, men ikke til Metroen.

PARTERNES KRAV OG BEGRUNDELSER:

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

" We took the metro from Örestad directly off the train from Malmö, to Forum to attend the fashion fair Gallery. We had entry tickets to all of the different fairs at Copenhagen Fashion Week. When the two controllers came, we gladly and unsuspectingly showed the tickets. Then came the chock - the controllers tells us they are NOT VALID??!! ...

We of course told the controller they must be mistaken, since both of us, at **several** different occasions, have had the information that entry tickets ARE valid also for transportation. No particular transport specified at any of the phonecalls made by me or Ms XX

The controllers went on by telling us we were not the only ones, many other visitors to Fashion Week had also made the same experience. We where also told that if we only contacted customer services, they would help us out of this unfortunate mishap. This would "just be a formality" we where told. We both wrote a complaint.

In the complaint, we wrote that we hope customer services can appreciate and understand that this was an honest misunderstanding and mistake from our side. We where told incorrect information and acted in good faith, as we had, as said on the webpage, HAVING MADE SURE TICKET WAS VALID, through several conversations with Copenhagen Fashion Week, both me AND my American colleague, ms xx and even others. We did not try to escape payment, but in fact gladly showed our tickets, in good faith trusting we had valid transportations.

We fully appreciate that you have to fine people trying to hitch a free ride. That was never our intention, we actually thought we had valid tickets. None of us are criminals, riding the transportation systems for free.

We also wrote that we hope with all our hearts that customer services would see the predicament we´re in and please cancel our fines.

I believe this generates extremely large amounts of bad will for Metro, being so rigid in cases like these. At the very least, you could lower the amount of the fine - 750DKK is ridiculous when we, your customers, make an honest mistake.

Now, I put my hopes in you, to please see this very unfortunate situation that we find ourselves in, my colleague and I. I suspect she will make her own complaint further.

Nowhere does it say "exclusively valid on Öresundståg". The only "only" on the ticket is in reference to the dates valid for travel. This is an obvious fault that we feel needs to be corrected for the future. Unless Metro actually likes to fine unsuspecting people 750DKK of course.

Especially since we are not the only ones according to the controllers ...A little bit better communication between Metro and CFF for the future is desired.

In reference to the rules of passengers own responsibility, this is EXACTLY what we did, my colleague and myself, when asking for, on several different occasions, and when given the answer "Yes, the entry ticket is also valid for travel between the different locations at the fair". No one informed us it was specifically NOT valid on the Metro. Who else should we have contacted if not the arranger, issuing the tickets? We acted in good faith, having done everything we could to ensure our tickets where good for the travels we intended, while visiting the CFF. And since regular tickets for the train ARE valid also for travel at destination and origin of travel, this is EXACTLY what we asked the event people more than once! So as NOT to be in the situation we are in right now! Therefore convinced doing nothing wrong, having been given the same information the whole time, at SEVERAL DIFFERENT occasions, by different people, we are now extremely disappointed in how this case has been handled.

Ridning for free on the metro is not on our agenda. I turned fifty this summer and believe me when I say riding for free never was and certainly isn't now, "a sport", nor something I do to save a dollar ...

If anything, you should be fining the CFF, for giving out wrongful and misleading information to their visitors.

The controllers scanned our tickets, that's where it says: "only valid for 8-11 aug", or whatever the dates where.

Negotiations between the CFF and Metro must have been ongoing for a while right? And isn't it then possible, if we are talking about a shadow of a doubt here, that some of the staff members at CFF, may have misinterpreted the info, and thought it to be valid already in August? It is possible! And if so, our fines ought to be cancelled and instead directed towards the CFF.

Of course, this is something that will be impossible to prove, seeing how the CFF will most definitely deny giving out any misinformation. We are the ones being held responsible for someone else's mistake and may have to pay a rather high price for their mistake. Not fair.

Yes, I know the agreement is not valid until this up-coming event. What I mean is that some of the staff at CFF may have misunderstood information regarding this agreement, and therefore in their turn, given out the wrong info. This IS quite possible."

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

"Like other means of public transportation in the [Copenhagen](#) area, The Metro operates according to a self-service system, where it is the passenger's own responsibility to ensure that he or she has a valid ticket before commencing a journey.

Before entering the Metro, the passenger must make sure that the ticket is validated correctly (date, time and zones) and that it is valid for the entire journey so the ticket can be shown at any time if requested by one of our stewards.

In cases where the passenger cannot show a valid ticket, a fine of DKK 750,- will be issued by the steward. This basic rule is a prerequisite for the self-service system that works for all public transportation in the [Copenhagen](#) area.

In every station, several information boards are present – among them one that concerns Traffic information. All boards are in both Danish and English.

An example of the Traffic information board is attached. It displays instructions on how to read and understand the zone map and explains how many zones are necessary for various journeys, as well as timestamp validity on both tickets and clip cards.

Beside the yellow information points present on all stations and in all trains, a separate information point has been placed next to the ticket vending machine. All of the information points will put the customer in direct contact with an operator in our control room, which is manned around the clock, 365 days a year.

In this specific case we have to draw the attention to the exhibitors' tickets where [this](#) is printed under the text **ØRESUNDSTÅG**:

**This ticket also allows you to use the Øresundståg
Valid for Øresundståg only from 7 – 11 August 2013**

The text above is printed to the left of the guest's name. This ticket is solely valid for the Øresundståg and the exhibition.

In conclusion, we adhere to our former response that the fare evasion ticket was correctly issued and we maintain our claim of dkk 750."

SEKRETARIATETS BEMÆRKNINGER:

Sekretariatet forespurgte Metro Service om følgende: "Som det fremgår af nedennævnte skærmdump vil der for den kommende fashionweek i 2014 være fri adgang til metroen, hvis man registrerer sig via www.gallery.dk. Kan Metro Service undersøge/bekræfte, at der var indgået en lignende aftale vedrørende fashionweek i august 2013, som klageren deltog i?"

Hertil har Metro Service svaret, at de har forhørt sig hos Metroselskabet, som har meldt tilbage: "*Der er ikke lavet aftale om "gratis" metro med sommer modeugen 2013.*" Metroselskabet anbefaler i denne forbindelse med deres tilbagemelding, at arrangørerne inddrages i sagen, hvis de har givet udtryk for, at der skulle være indgået en aftale om at køre gratis med metroen i august 2013."

BILAG TIL SAGEN:

Kopi af kontrolafgiften.
Kopi af parternes korrespondance.

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 jernbaneverksamhedernes 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 jernbaneverksamheden bestemmelser om kontrolafgift i forretningsbetingelserne.

Det fremgår af Metroens rejseregler (forretningsbetingelser), at passagerer skal have gyldig billet, gyldigt stemplet klippekort eller gyldigt månedskort fra rejsen begynder. Billet eller kort skal opbevares under hele rejsen og indtil Metroens område forlades. Billetter og kort skal fremvises til Metro Stewarden på forlangende. Billetkontrol kan ske både under rejsen, ved udstigning og på Metrostationen efter afsluttet rejse. 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. Afgiften er et girokort, som kan betales via bank eller på posthus. Kontrolafgiften er samtidigt billet til vidererejse til den Metrostation, passageren oplyser som bestemmelsesstationen. Kontrolafgiften er 750 kr. for voksne.

Den konkrete sag:

Det stod anført på adgangsbilletten til deltagelse i modeugen i august 2013, at den var gyldig til Øresundstog.

Ankenævnet lægger videre til grund, at der yderligere stod: "Valid for Øresundståg only from 7 – 11 August 2013", selv om det ikke fremgår af det billede, som blev taget i forbindelse med kontrollen, idet dette var den gængse formulering på denne billettype.

Det stod således ikke anført, at adgangsbilletten kunne anvendes i Metroen, og da klageren ved kontrollen ikke kunne forevise anden form for billet, blev kontrolafgiften pålagt med rette.

Det kan ikke føre til et andet resultat, at klageren og andre gæster til modeugen har fået forkert vejledning fra arrangørerne om, at der var gratis transport med metroen, hvis man var tilmeldt modeugen. En uvedkommende tredjemand kan ikke forpligte Metro Service til at yde gratis metrotransport uden udtrykkelig aftale herom, og Metro Service er ikke ansvarlig for, hvad der fejlagtigt måtte have fremgået af de billetter, som deltagerne har fået fra arrangørerne af modeugen.

Det er ikke Metro Service, som skal rette kravet om betaling af kontrolafgiften mod arrangørerne, da klageren hæfter direkte over for Metro Service for betaling af kontrolafgiften.

Klageren må forsøge at rette henvendelse til arrangørerne med henblik på, at de godtgør hendes udgift til betaling af kontrolafgiften, eller alternativt undersøge om der kan klages til Forbrugerrådet over sagens udgifter; 750 kr. for kontrolafgift samt klagegebyr på 160 kr. til Ankenævnet for Bus, Tog og Metro.

Ankenævnet træffer herefter følgende

AFGØRELSE:

Metro Service er berettiget til at opretholde kravet om klagerens betaling af kontrolafgiften på 750 kr. Beløbet skal betales inden 30 dage jf. ankenævnets vedtægters § 15.

Da klageren ikke har fået medhold i klagen, tilbagebetales klagegebyret ikke, jf. § 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, www.advokatsamfundet.dk og /eller eget forsikringssselskab om eventuel forsikringsretshjælp.

På ankenævnets vegne, den 27. januar 2014



Tine Vuust
Nævningsformand

