

**AFGØRELSE FRA
ANKENÆVNET FOR BUS, TOG OG METRO****Journalnummer:** 2013-0291**Klageren:** XX og XX
8501 Bissegem, Belgien**Indklagede:** Metroselskabet I/S v/Metro Service A/S
CVR: 21 26 38 34**Klagen vedrører:** To kontrolafgifter på hver 750 kr. ialt 1500 kr., idet klagerne alene havde billetteret for deres cykler og ikke for sig selv.**Ankenævnets
sammensætning:** Nævnensformand, landsdommer Tine Vuust
Bjarne Lindberg Bak
Ingrid Dissing
Lise Bjørg Pedersen
Torben Steenberg**SAGSFREMSTILLING:****Klageren reklameret til indklagede:** Den 19. august 2013.**Klagegebyr modtaget i ankenævnet:** Den 19. september 2013.**Sagens omstændigheder:** Klagerne er et belgisk ægtepar, der var på sommerferie i København. De havde medbragt deres cykler, og boede på et Bed & Breakfast i Vanløse, hvorfra de den 19. august 2013 rejste med metroen. Inden påstigningen havde de købt et cykel-klippekort og stemplet dette to gange i den tro, at klippekortet var rejsehjemmel for både dem og deres cykler.

Kort efter Vanløse station kl. 11:34 var der kontrol af klagernes rejsehjemmel, og da de ikke kunne forevise gyldig billet, blev hver af klagerne pålagt en kontrolafgift på 750 kr.

Den samme dag anmodede de Metro Service om annullering af kontrolafgiften. Derudoverl modtog Metro Service den 5. september 2013 et brev fra klagerene.

Metro Service fastholdt kontrolafgifterne den 5. september 2013 med henvisning til selvbetjeningsprincippet og kundernes eget ansvar for at have korrekt billet.

Klageren: Ønsker kontrolafgifterne annulleret og har til støtte herfor gjort gældende,

”

We were victims of a misunderstanding.

We are a Belgian couple spending their summer holidays at Copenhagen for the first time.

As we were told Copenhagen is a pro-bicycle city, we brought our own bicycles from Belgium to Copenhagen.

We were staying at a Bed and Breakfast at Vanløse and we decided that morning of the 19th of August to make use of the underground and to take our bicycles with us to visit the city.

We bought a 'Cykel 10-turskort' using a distribution machinery, thinking it was a combinationcard for passenger with bicycle and checked in twice before getting in.

We were totally feeling confident about it, but then, soon after leaving Vanløse-station, our tickets were controlled by two conductresses. They told us our Cykel 10-turskort was only valid for the bicycles, not for us as persons and we had to buy a second 'Klippekort'. We tried to explain that we were tourists and not familiar with the local practices and we were willing to pay two extra tickets immediately, but they refused and we both received a 100 euro fine. The conductresses said they understood us but that they were only doing their job and if we didn't agree about it, we had to turn to the customer service.

With this complaint we want to assure you that we had no bad intention and are convinced that both fines will be dropped.

Our pieces of evidence (tickets, clip cards and receipts with the name of Johan Deprez on it) were sent to Metro.

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Indklagede: Fastholder kravet om betaling af kontrolafgifterne og har til støtte herfor gjort gældende,

” 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.



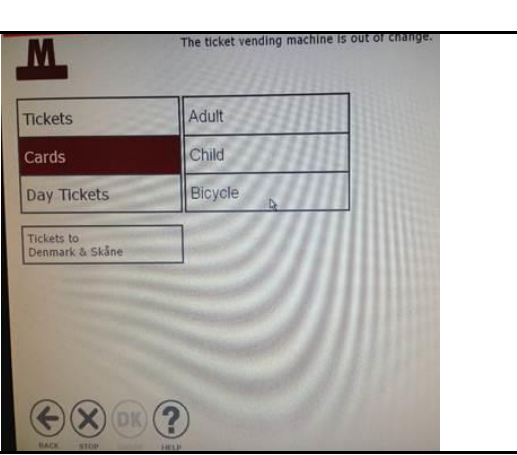
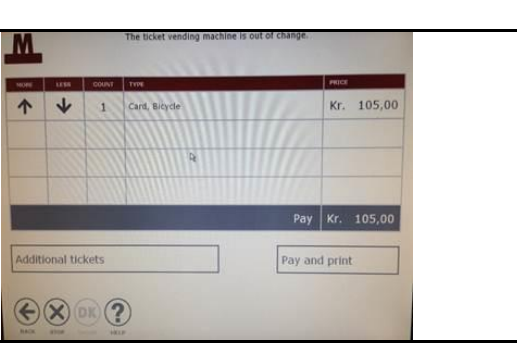
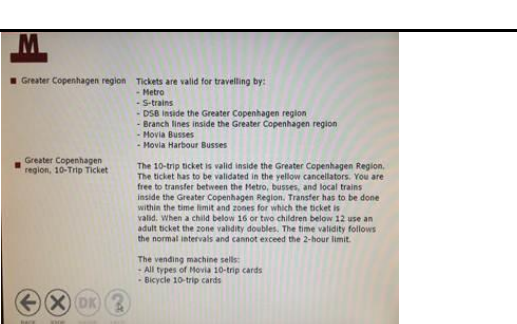
It is the customers own responsibility to ensure that they are in possession of the correct ticket type with the right amount of zones and that their ticket or clip card is correctly stamped. The ticket needs to be bought before the journey begins and needs to be valid for the entire journey. Furthermore, customers must be able to show the ticket or card in case of a ticket inspection.

It is unfortunate that the customers have misunderstood the ticket type and mistakenly thought that the bicycle clip card was valid for both passengers and bicycles. However since only the clip card for bicycles was used, that means that, neither of the two customers had a valid adult ticket, and therefore did not pay for the journey.

Our members of staff have been instructed to issue a fine to all passengers without a valid ticket, they do not consider whether it is a mistake, and if it is intentional or not. If the passenger is unable to present a valid ticket, the passenger must accept the issue of a fine.

Even though not being familiar with the ticketing system, customers still have the responsibility to hold a valid ticket.

On all TVMs (Ticket Vending Machines), the purchase menu is available in English. See the screenshots below:

<p>Press the "UK" button, to choose menu in english</p>	 <p>The screenshot shows the main menu of the ticket machine. On the left, there are buttons for 'Billet', 'Klippekort', 'Dagsbilletter', and 'Afbetretsk valg af station Danmark & Skåne'. On the right, there is a map of the Greater Copenhagen region. At the bottom, there are navigation buttons: 'BACK', 'STOP', 'UK', and 'HELP'. The 'UK' button is highlighted with a white border.</p>	
<p>Pres the "Cards" button, to choose between 10-trip cards</p>	 <p>The screenshot shows the same main menu as above. The 'Cards' button is now highlighted with a white border. The 'UK' button is no longer highlighted.</p>	
<p>Press the "Bicycle" button to buy a 10-trip card for bicycles</p>	 <p>The screenshot shows the 'Cards' menu. At the top, it says 'The ticket vending machine is out of change.' Below this, there are buttons for 'Tickets', 'Cards', 'Day Tickets', and 'Tickets to Denmark & Skåne'. The 'Cards' button is highlighted, and a sub-menu is displayed with options for 'Adult', 'Child', and 'Bicycle'. The 'Bicycle' option is highlighted. At the bottom, there are navigation buttons: 'BACK', 'STOP', 'DK', and 'HELP'.</p>	
<p>Confirm payment of Card for bicycle</p>	 <p>The screenshot shows the payment screen. At the top, it says 'The ticket vending machine is out of change.' Below this, there is a table with columns for 'LINE', 'UP', 'DOWN', 'COUNT', 'TYPE', and 'PRICE'. The table contains one row: '1 Card, Bicycle' with a price of 'Kr. 105,00'. Below the table, there is a 'Pay Kr. 105,00' button and an 'Additional tickets' input field. At the bottom, there are navigation buttons: 'BACK', 'STOP', 'DK', and 'HELP'.</p>	
<p>Pres the ? button, and learn that the TVM sells All types of Movia 10-trip cards and bicycle 10-trip cards.</p>	 <p>The screenshot shows the help screen. At the top, it says 'The ticket vending machine is out of change.' Below this, there are two sections: 'Greater Copenhagen region' and 'Greater Copenhagen region, 10-Trip Ticket'. The first section lists the types of transport the ticket is valid for: Metro, S-trains, DSB inside the Greater Copenhagen region, Branch lines inside the Greater Copenhagen region, Movia Buses, and Movia Harbour Buses. The second section explains that the 10-trip ticket is valid inside the Greater Copenhagen Region and provides details about its validity and transfer rules. At the bottom, there are navigation buttons: 'BACK', 'STOP', 'DK', and 'HELP'.</p>	

On the information boards on the stations, the below information is present;

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.

In none of the above mentioned, there are information indicating that the bicycle 10-trip card is valid for persons as well.

Even though the name "Cykel 10 turs kort" is in Danish, the word cykel is not far from bicycle, and is not indicating a combi ticket as well.

Example of case handled by ABTM in favor of DSB regarding only a bicycle ticket and no adult ticket 2012-0059

We therefore maintain our claim towards the complainant – which is 2 fines of 750 DKK each."

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 jernbanevirksomhedernes 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.

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.

Fra Metros rejseregler:

Cykler

Uden for cykel-spærretiden kan du medtage din cykel i Metroen, når du har købt en cykelbillet. I cykel-spærretiden 7.00-9.00 og 15.30-17.30 er cykler ikke tilladt i Metroen. Medtages cykler i spærretiden, udstedes en kontrolafgift, og fortsat rejse er ikke tilladt. Dette gælder

også selv om påstigning er sket inden spærretidens start. Kontrolafgiftens beløb kan ses under afsnittet Billetkontrol og misbrug.

I perioden juni, juli og august er cykler tilladt hele døgnet, hvis du har en gyldig cykelbillet. Metro Steward kan altid afvise cykler, hvis det vurderes, at der ikke er plads i toget.

Den konkrete sag:

Klagerne kunne ved kontrol den 19. august 2013 ikke forvise gyldig billet, idet de kun kunne forevise gyldig rejsehjemmel til deres cykler. Kontrolafgifterne blev dermed pålagt med rette.

Ankenævnet finder, at passagerer, som ikke forstår dansk, ved den engelske information i klippekortautomaten på metroens station, hvor man skal vælge mellem "adult", "child" eller "bicycle", får tilstrækkelig oplysning om, at cykelklippekort alene kan anvendes til cykler og ikke til passagerer.

Det bemærkes, at pligten til at betale kontrolafgift ikke er betinget af, om passageren har forsøgt at unddrage sig betaling. Dette er et område med stor mulighed for omgåelse af reglerne, hvorfor ankenævnet ikke finder, at der er grundlag for at fravige reglerne om, at passageren selv bærer ansvaret for korrekt billettering.

Ankenævnet træffer herefter følgende

AFGØRELSE:

Metroselskabet I/S v/Metro Service A/S er berettiget til at opretholde kravet om klagerens betaling af kontrolafgifterne på hver 750 kr. i alt 1500 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
Nævnshoved