

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer: 2013-0294

Klageren: XX på egne vegne og på vegne YY
7441 Bording

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

Klagen vedrører: 2 kontrolafgifter på hver 750 kr. for manglende billet. Billetautomaten ville ikke acceptere deres betalingskort

**Ankenævnets
sammensætning:** Nævnensformand, landsdommer Tine Vuust
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SAGSFREMSTILLING:

Klageren reklameret til indklagede: 9. juni 2013

Klagegebyr modtaget i ankenævnet: 20. september 2013

Sagens omstændigheder: Klageren skulle den 7. juni 2013 med 3 andre rejsefæller med metroen fra Ørestad st. De forsøgte med flere forskellige betalingskort – bl.a. VISA at købe billetter i den ene billetautomat uden held, idet maskinen ifølge klagerens oplysninger skrev, at den var midlertidigt ude af drift til betalingskort. Da de kun havde 50 kr. i mønter, kunne de kun købe billetter til 2 af de 4 rejsende.

Der er 2 billetautomater på Ørestad st., men klageren gør gældende, at de ikke så den anden automat.

De steg herefter på metroen uden at have købt billetter til to af de fire rejsende. Ved kontrol af deres rejsehjemmel, lige efter at metroen havde forladt Ørestad st., blev de 2 passagerer uden billetter pålagt hver en kontrolafgift på 750 kr. kl. hhv. 10:07 og 10:09. Stewarden noterede følgende: "Note>07-06-2013 08:13:15 - ifølge pax virkede tvm ikke trods 2 pax hun fulgtes med lige havde købt billet </Note"

Den 9. juni 2013 anmodede klageren Metro Service om annullering af kontrolafgiften med henvisning til, at billetautomaten på Ørestad st. ikke havde accepteret nogen af de betalingskort, som de havde forsøgt anvendt, at automaten ikke tog imod sedler, samt at de kun havde nok mønter til

køb af billet til 2 af de 4 rejsende. Hun oplyste, at stewarden havde sagt, at han ville tage tilbage og tjekke automaten.

PARTERNES KRAV OG BEGRUNDELSER:

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

"We could not purchase a ticket as the machine was not working for cards at the point. We did not have coins. We were 4 travelling and we only had enough coins between to purchase two tickets which we did. We should not have to pay the fine when we tried to purchase tickets and due to Metro's faulty equipment could not. We were of course very happy to pay the guard the fare. We have two witnesses who can confirm the machine was not working. The guard also said he would go back to check the machine

We were unaware there were two machines at this station and did in fact only try one machine, which did not accept credit cards. If there was another machine it was very poorly signed (we are not regular travelers in CPH so never expected there to be another machine to be honest). If the logs show there were no credit card transactions around that time I would suggest that was because the machine was not working.

The guard on the train said he would go back and check the machine - he did get off at the next station, but did he go back? He would then have been able to see the machine was not accepting credit cards.

We have two others that can confirm we tried several times with different credit cards to purchase tickets.

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

"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. This basic rule is a premise for the self-service system used in the Metro. This information can be found in the Metro Travel regulations found on 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 claims that the TVM (Ticket Vending Machine) at Ørestad st. did not work with credit cards. As the complainant did not have sufficient coins to purchase four tickets for the party of 4, only two tickets were bought.

It should be noted, that Ørestad st. has got 2 TVMs at the platform.

We have contacted our technical department, in order to check if any failures has been registered. This is not the case. One of the TVMs (No. 103) has no credit card transactions around the time of purchase, however the other TVM (No 133) has several credit card transaction around the time of purchase.

As the complainant apparently did not try both TVMs, we are of the belief that the complainant did not make sufficient effort to get a valid ticket for all four people in the party. As two persons in the party did not hold a ticket, the two issued fines (No. 00290323 and 00290324) are issued correctly.

Please find below the log from TVM 133 on Ørestad st., covering the 7th of June 2013 – between 9:30 and 10:30, as requested.

133	2013.06.07	09:30:00	66232	75696	572	95	16020410	CP Barn 72 timer	[REDACTED]
133	2013.06.07	09:30:17	66232	75697	571	95	16020410	CP Barn 72 timer	[REDACTED]
133	2013.06.07	09:31:50	66233	75698	1300	24	11010210	HT-Voksen 2 zones	[REDACTED]
133	2013.06.07	09:36:42	66234	75699	1298	24	11010210	HT-Voksen 2 zones	[REDACTED]
133	2013.06.07	09:37:29	66235	75700	1297	36	11010310	HT-Voksen 3 zones	[REDACTED]
133	2013.06.07	09:38:25	66236	75701	570	150	13010210	Klip Voksen 2 zoner	[REDACTED]
133	2013.06.07	09:39:11	66237	75702	1294	24	11010210	HT-Voksen 2 zones	[REDACTED]
133	2013.06.07	09:44:16	66238	75703	1293	24	11010210	HT-Voksen 2 zones	[REDACTED]
133	2013.06.07	09:44:27	66238	75704	1292	24	11010210	HT-Voksen 2 zones	[REDACTED]
133	2013.06.07	09:48:20	66239	75705	1290	24	11010210	HT-Voksen 2 zones	[REDACTED]
133	2013.06.07	09:48:31	66239	75706	1289	24	11010210	HT-Voksen 2 zones	[REDACTED]
133	2013.06.07	09:50:57	66240	75707	1287	24	11010210	HT-Voksen 2 zones	[REDACTED]
133	2013.06.07	09:51:08	66240	75708	1286	24	11010210	HT-Voksen 2 zones	[REDACTED]
133	2013.06.07	09:56:33	66241	75709	569	190	16010410	CP Voksen 72 timer	[REDACTED]
133	2013.06.07	10:02:07	66242	75710	1283	12	14000010	Tillægsbillet	[REDACTED]
133	2013.06.07	10:06:29	66243	75711	1282	24	11010210	HT-Voksen 2 zones	[REDACTED]
133	2013.06.07	10:06:40	66243	75712	1281	24	11010210	HT-Voksen 2 zones	[REDACTED]
133	2013.06.07	10:12:26	66244	75713	1280	24	11010210	HT-Voksen 2 zones	[REDACTED]
133	2013.06.07	10:17:22	66245	75714	1279	24	11010210	HT-Voksen 2 zones	[REDACTED]
133	2013.06.07	10:17:34	66245	75715	1278	24	11010210	HT-Voksen 2 zones	[REDACTED]
133	2013.06.07	10:17:45	66245	75716	1277	24	11010210	HT-Voksen 2 zones	[REDACTED]
133	2013.06.07	10:17:56	66245	75717	1276	24	11010210	HT-Voksen 2 zones	[REDACTED]
133	2013.06.07	10:22:42	66246	75718	568	75	15010410	CP Voksen 24 timer	[REDACTED]
133	2013.06.07	10:23:40	66247	75719	567	75	15010410	CP Voksen 24 timer	[REDACTED]
133	2013.06.07	10:24:37	66248	75720	1274	24	11010210	HT-Voksen 2 zones	[REDACTED]
133	2013.06.07	10:25:39	66249	75721	566	75	13020210	Klip Barn 2 zoner	[REDACTED]
133	2013.06.07	10:27:33	66250	75722	1273	24	11010210	HT-Voksen 2 zones	[REDACTED]
133	2013.06.07	10:28:42	66251	75723	1272	24	11010210	HT-Voksen 2 zones	[REDACTED]
133	2013.06.07	10:30:03	66252	75724	1271	24	11010210	HT-Voksen 2 zones	[REDACTED]

Hvor der ikke er noget kortnummer (længst til højre) er det et møntkøb.

For purchase made with credit card, the card numbers have been hidden.

Please note, that on the Information boards on all stations, guidance are given on how to contact staff, in case of need of contact and further information. (See below)

Kontakt

Hjælp til din rejse kan fås ved at benytte de gule opkaldssteder, som findes på perroner og i tog eller benytte infoknapperne på billetautomaten. Yderligere information findes på hjemmesiden www.m.dk og i folderen "Rejseregler", som findes på stationerne.

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.

On the Information boards the following information are also given:

Penalty

Remember it is your responsibility to have a valid ticket or travel card for both you and your potential companions. Lack of ticket or card and travelling during curfew (pensioners and/or bicycles) will per 1. January 2013 result in a penalty charge of 750 DKK per adult, 375 DKK per child/dog and 100 DKK per bicycle and onward travel in this period is not allowed. We refer you to www.m.dk and the travel rules for applicable penalty charges.

Based on the above mentioned, we are of the opinion that the complainant did not carry out sufficient efforts in obtaining valid tickets, as the complainant easily could become aware that travelling without valid ticket will result in a fine and that staff could be contacted via the yellow dial locations."

Til dette har klageren anført:

"They have said there were two machines at the station, I would like to see the print from the other machine.

As detailed before:

1. We only tried one machine - we only saw one machine and no assistance was given. We have witnesses to prove this.
2. The guard we met on the train said he would go back and check that the machine was indeed not accepting credit card payments. We have seen no report from him. Did he check the machine?
3. I would suggest the signage at the station is not sufficient enough to advise there are other ticket machines at the station. Maybe a suggestion would be to have the machine give a message that there is another machine if credit cards are not being accepted - then we could have easily tried another machine. No message was received on the screen.
4. Is it not the Metro's responsibility to ensure that there equipment is in a serviceable condition at all times?

We are not disputing the fact we travelled without a ticket but we made in our opinion the best effort to try to purchase one and it was not a deliberate attempt to avoid paying a fare.

I look forward to receiving the print from the other machine.”

Hertil har Metro Service anført:

“On Ørestad st. two Ticket Vending Machines are available: TVM103 and TVM113.

We have forwarded logs from TVM133, showing several transaction at the time in question. We have not forwarded logs from the other machine, as there are no card transactions in the time in question.

No reports has been received from the steward, regarding the TVM – nor is the TVM mentioned with failures in our control room log.

The complainant suggests that information is not sufficient on the stations and she suggests information on the TVMs to try another TVM, if the TVM in question does not accept the creditcard presented.

As mentioned in our earlier reply, there are information available on the stations – namely on the information boards.

We cannot guarantee that all equipment are working 24/7, but as one TVM was working at the time in question, the complainant had the possibility of purchasing a ticket.

The complainant admits that only one TVM was tried, and was therefore well aware the train was boarded without valid ticket.

Two TVS are present on the station, and the station is not so big, that it would be impossible to locate it.

Based on the above mentioned, we still maintain our claim towards the complainant.”

Klageren har hertil gjort gældende:

“They say there were no credit card purchases on the other machine..... clearly as it was not working!

I would also like to hear or see a written statement from guard who was supposed to have gone back to check the machine. Can this be done?

They are missing many points that we made.

For a fair case to be heard I would expect the information I had asked for to be presented, the guard to be interviewed etc etc. Has this been done?”

Metro Service har besvaret dette således:

“Even if the other TVM did not work, it will not change our view in this case, because another TVM, which worked perfectly, was present at the station.

The TVMs are placed within 10 metres from each other, and if the complainant had turned 180 degrees, she would have been looking at the other TVM.

We have therefore not interviewed the steward, whether he checked or did not check the other TVM.

The important issue here is, that:

- The complainant boarded a train, being perfectly aware that they did not hold valid tickets
- The complainant did not check the station for an alternative TVM
- The complainant did not try to get in contact with staff, prior to boarding the train.

In our view will it be very expensive to change the software in the TVM, some information can be given in some of them, that another TVM is present at the station.

Especially in this case, where the other TVM can be found within eyesight - only 10 metres away.

Based on the above, we still maintain our claim towards the complainant.”

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:

Ankenævnet lægger til grund, at den TVM – ticket vending machine (billetautomat), som ikke har haft nogen betalingskorttransaktioner, og hvorfra der ikke er fremlagt logs - var ude af drift for så vidt angik betalingskort.

Ankenævnet lægger samtidig til grund, at den anden billetautomat på perronen ca. 10 meter derfra var i drift, og der er i tidsrummet 09:30-10:30 gennemført 16 køb af billetter med betalingskort.

Ankenævnet lægger som konsekvens heraf til grund, at den billetautomat, i hvilken klageren for-gæves anvendte sine betalingskort, var den automat, som var ude af drift for så vidt angår beta-lingskort. Klageren har oplyst, at dette blev annonceret på skærmen ved deres betalings-forsøg.

Endelig lægger ankenævnet til grund, at klageren og rejsefællen steg på metroen velvidende, at de ikke havde købt billet. Kontrolafgifterne blev dermed pålagt med rette.

Der findes ikke at have foreligget sådanne særlige omstændigheder, at de skal fritages for kon-trolafgifterne.

Der er indbetalt 2 klagegebyr á 160 kr., men da ankenævnet har behandlet klagen over de to kon-trolafgifter samlet i nærværende sag, tilbagebetales det ene klagegebyr til klagerne.

Ankenævnet træffer herefter følgende

AFGØRELSE:

Metro Service er berettiget til at opretholde kravet om klagerens betaling af kontrolafgifterne på hver 750 kr., i alt 1.500 kr. Beløbet skal klagerne betale inden 30 dage jf. ankenævnets vedtæg-ters § 15.

Da klageren ikke har fået medhold i klagen, tilbagebetales klagegebyret ikke, jf. § 26, stk. 4, mod-sætningsvist.

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 sagsan-læg på www.domstol.dk, www.advokatsamfundet.dk og /eller eget forsikrings-selskab om eventuel forsikringsretshjælp.

På ankenævnets vegne, den 3. april 2014



Tine Vuust
Nævnformand