

**AFGØRELSE FRA  
ANKENÆVNET FOR BUS, TOG OG METRO****Journalnummer:** 2013-0355**Klageren:** XX og YY  
Sverige**Indklagede:** Metroselskabet I/S v/Metro Service A/S  
**CVR:** 21 26 38 34**Klagen vedrører:** 2 X kontrolafgift á 750 kr. for manglende billet. Havde ikke mønter og kunne ikke betale med American Express.**Ankenævnets  
sammensætning:** Nævnensformand, landsdommer Tine Vuust  
Bjarne Lindberg Bak  
Torben Steenberg**SAGSFREMSTILLING:****Klagerne reklameret til indklagede:** Den 24. juli 2013.**Klagegebyr modtaget i ankenævnet:** Den 23. oktober 2013.**Sagens omstændigheder:** Klagerne var den 14. juli 2013 på besøg i København og rejste for første gang med metroen.

Ifølge klagerne forsøgte de inden påstigningen at købe billet på Frederiksberg st., men den ene af de to billetautomater ville ikke modtage American Express, selvom kortet var angivet som godkendt betalingsmiddel. Den anden maskine var i uorden, og klagerne havde ikke nok mønter til at kunne betalt deres billetter kontant. De var ikke klar over, at de ikke kunne betalte med sedler i automaterne. Idet der var en lang kø bag dem, blev klagerne stressede over, at de ikke kunne købe billet, hvorfor de ikke var opmærksomme på de gule opkaldspunkter.

De steg herefter på metroen uden billet. Kl. hhv 10:47 og 10:54 blev klagerne pålagt en kontrolafgift hver på 750 kr. På begge kontrolafgifter, der er udstedt af to forskellige stewarder, er der ved billet noteret: "intet forvist".

Den 24. juli 2013 anmodede klagerne om annullering af kontrolafgifterne og gjorde ovenstående gældende.

Metro Service fastholdt kontrolafgifterne den 1. oktober 2013 med henvisning til selvbetjeningsprincippet og gjorde opmærksom på de gule opkaldspunkter, der kan anvendes ved behov for hjælp.

**Klagerne:** Ønsker kontrolafgifterne annulleret og har til støtte herfor anført følgende:

"We understand from surfing the web that our chances of being succesful in this case are miniscule. With this appeal I object that you have applied a strict responsibility on me not paying and not bothering that the intention was to pay, which is a very tough stance when it comes to people from abroad using your UNMANNED metro for the first time; 1). we tried to pay with AMEX but the machine refused it 2). Being average 21st century people we did not carry half a tonne of coins 3) 1 out of 2 machines in the station was out of order and the line built behind us, probably causing us not to see the ?help button? (which we later were told be there). Is this a tourist tax?"

Quite interestingly, after having told a colleague about the fine, she said that when they were at a conference in Copenhagen they were actually warned by the hotel-staff not to take the Metro as that was very complicated and not to recommend for tourists! When they did anyway, they had to ask other travellers for help, to simply manage to buy the right ticket. I asked if they had used the help-button, but neither she knew of its existence.

Clearly, Copenhagen is quite a popular city for tourists, and having a Metro-system like yours most certainly bring you a lot of money, no doubt. The question is, at what cost? So far, tourists are paying for it, not only as temporary consumers, but also with your tourist tax which we have been penalised after having effortlessly trying to buy tickets. But, for how long will the tourists continue to come?

In any other criminal justice system, crimes committed with and without intent are judged differently. However, our attempts to make it right is apparently of no meaning to you. Which, of course in your eyes, and your eyes only, leave you without any reponsibility.

Lastly, that we, as a family who tried to buy tickets for both, and failed, should result in two fines, including doubling of the cost for making an appeal twice for the same case, is nothing short of abuse."

"What we claim in our complaint is that in a metro-system designed in such a way as to put **all** responsibility on the travelers, one would expect that the party in charge of the vending machines accepts some responsibility once these do not function, as they are the fundamental requirement of a self-serving system.

The fact that the investigators from your party write in their judgment "In the case in question, the complainant claims that one TVM (Ticket Vending Machine) is broken, and the other would not accept the complainants AMEX card.

As the complainant has not informed us of which station this should have occurred, we have not been able to investigate this." tells us that, had we informed them of the station in question, this would in fact had been investigated and hence ought to be taken under consideration. Why else even comment on it? However, it is clearly stated on the fine we received, which is the basis for this whole conflict, that we travelled from FB to KGN, hence the machines in question were at Frederiksberg. Again, as already stated in our original complaint, if it is possible for you to track our attempts to pay, the last five digits of our card is "62002".

Admittedly, we should have called a help-button, had we only known of its existence. Unfortunately we did not, and as far as we understand from talking to people and searching the net, we are far from the only ones. The conclusion drawn from that is that had the help-buttons been put in such a visible way as to actually be detected by us tourists, that would require far more personnel to actually be there to assist lost tourists like ourselves whose card is not accepted. That increase

in staff-requirement would of course be too costly for you, especially when the machines are out of order, and the metro would not only demand a larger budget for salaries, but would also have to do without the extra income from tourist-fines. Surely, this is a better system. The fact that we travelled as a family, that we share cards, in this case makes us pay twice for a mistake caused by you. "

**Indklagede:** Fastholder kravet om betaling af kontrolafgifterne og har til støtte herfor anført følgende: "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](http://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 one TVM (Ticket Vending Machine) is broken, and the other would not accept the complainants AMEX card. As the complainant has not informed us of which station this should have occurred, we have not been able to investigate this.

However, that complainant has boarded a metro train without a valid ticket, and without asking staff for assistance.

It is stated in the travel regulations of the metro, that all passenger must hold a valid ticket or card before boarding and furthermore, that if you cannot present a valid ticket upon request, you are liable to pay a fine (See below)

### **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 metrosta-

And

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.

As the metro is an unmanned system, the revenue inspection is carried out as spot checks, and the responsibility of being able to present a valid ticket upon request, lies with the passenger. In case the passenger for some reason cannot obtain a valid ticket, he/she should contact staff prior boarding a train.

Staff can be contacted either in person or via the various call points throughout the system

The information mentioned above, is also present on the info boards on all stations:

#### 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](http://www.m.dk) and the travel rules for applicable penalty charges.

And

#### 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](http://www.m.dk) and the folder "Rejseregler" provide more information.

"

#### **SEKRETARIATETS BEMÆRKNINGER:**

Metro Service har adspurgt bekræftet, at den ene af de to billetautomater på Frederiksberg st. den 14. juli 2013 var ude af drift og har indsendt dokumentation for, at den anden billetautomat var fuldt funktionsdygtig.

#### **BILAG TIL SAGEN:**

Kopi af kontrolafgiften.

Kopi af parternes korrespondance.

#### **ANKENÆVNETS BEMÆRKNINGER:**

##### ***Retsgrundlaget:***

Ifølge § 2, stk. 2, i lovekendtgørelse 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.

### ***Den konkrete sag:***

Det fremgår af Metroens forretningsbetingelser, at passageren selv skal sikre sig gyldig billet inden påstigning på metroen.

Ankenævnet lægger til grund, at klagerne stod på metroen, selvom de vidste, at de ikke havde gyldig rejsehjemmel. De kunne dermed ikke forevise gyldig rejsehjemmel ved kontrol, og kontrolafgifterne er pålagt med rette.

Det er ankenævnets opfattelse, at indklagede har ansvaret for, at deres materiel er funktionsdygtigt, men at en passager er forpligtet til at udfolde rimelige bestræbelser på at erhverve sig en billet i det tilfælde, hvor den maskine, som passageren ønsker at benytte, tilsyneladende ikke virker.

Da Metro Service har indsendt dokumentation for, at den anden automat var funktionsdygtig, kunne baggrund for at klagerne ikke kunne anvende deres betalingskort være, at de skulle vente med at isætte kortet, indtil de på touch-screenen havde gennemført deres bestilling.

Klagerne kunne have anvendt de gule opkaldspunkter og herigennem modtaget hjælp til køb af billetter, inden påstigningen.

Ankenævnet har i tidligere sager statueret at den danske og den engelsk tekst der vejleder på billetautomaterne er tilstrækkelig.

På den baggrund finder ankenævnet, at der ikke har foreligget sådanne særlige omstændigheder, at klagerne skal fritages for at betale den pålagte kontrolafgift ved rejse uden gyldig rejsehjemmel. Ankenævnet bemærker, at der er mulighed for at indgå en afdragsordning med Metro Service.

Ankenævnet træffer herefter følgende

### **AFGØRELSE:**

Metroselskabet I/S v/Metro Service A/S er berettiget til at opretholde kravet om klagernes betaling af kontrolafgifterne på i alt 1.500 kr. Beløbet skal betales inden 30 dage jf. ankenævnets vedtægters § 15.

Da klagerne 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](http://www.domstol.dk), [www.advokatsamfundet.dk](http://www.advokatsamfundet.dk) og /eller eget forsikringssselskab om eventuel forsikringsretshjælp.

På ankenævnets vegne, den 3. april 2014



Tine Vuust  
Nævnensformand