

**AFGØRELSE FRA  
ANKENÆVNET FOR BUS, TOG OG METRO**

**Journalnummer:** 2014-0219

**Klageren:** XX på egne vegne og på vegne af sine to døtre  
USA

**Indklagede:** Metroselskabet I/S v/Metro Service A/S  
**CVRnummer:** 21263834

**Klagen vedrører:** Kontrolafgift på hhv. 750 kr. og 2 kontrolafgifter på 375 kr. for manglende billet. Klageren kunne ikke finde billetautomaten på perronen.

**Ankenævnets  
sammensætning:** Nævnensformand, landsdommer Tine Vuust  
Bjarne Lindberg Bak  
Stefan Krehbiel  
Asta Ostrowski (2 stemmer)

**SAGSFREMSTILLING:**

**Klageren reklameret til indklagede:** 29. juni 2014

**Klagegebyr modtaget i ankenævnet:** 14. juli 2014

**Sagens omstændigheder:**

Klageren, som er fra USA og var på besøg i Danmark, rejste den 25. juni 2014 med sine døtre med metroen fra Kgs Nytorv st. mod Lufthavnen. Da de medbragte kufferter, tog de elevatoren ned til perronen.

I følge klageren fik de at vide af en medrejsende i elevatoren, at billetter kunne købes på perronen. Da de imidlertid ikke fandt nogen automat på perronen, regnede de med at kunne købe billet efter udstigning.

Billetautomaten befinder sig på et niveau over perronen.

Efter metroen havde forladt Kastrup st., var der kontrol af deres rejsehjemmel. Klageren blev pålagt en kontrolafgift på 750 kr. for manglende forevisning af rejsehjemmel, og døtrene blev hver pålagt en kontrolafgift på 375 kr.

Den 29. juni 2014 anmodede klageren Metro Service om at annullere kontrolafgifterne, idet han gjorde gældende som anført ovenfor.

Metro Servoce fastholdt kontrolafgifterne i mail af 11. juli 2014 med følgende begrundelse:

"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 your responsibility to ensure that your ticket or clip card is correctly stamped and that it is valid for the entire journey. Furthermore, you must be able to show the ticket or card in case of a ticket inspection. All information is regarding tickets and the zone system is available on the platforms. Ticket machines are placed at the entrance to the station."

## **PARTERNES KRAV OG BEGRUNDELSER OVER FOR ANKENÆVNET:**

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

"Myself and my two fourteen year-old daughters visited Copenhagen for the first time in June this year. At the end of a very enjoyable stay we made our way to the Kungens Nytorv metro station – with the goal of traveling to the airport. As we each had large suitcases we opted to use the elevator to get to the train. On entering the crowded elevator we asked a fellow traveler how to pay for the train and were told that we could pay on the platform. However, when we reached the platform we could not find any ticket office or ticket machine. It was at this point that I, and I alone, made a poor assumption that we could pay for our trip either onboard the train or upon arrival.

We boarded the train and were stopped by inspectors on our way to the airport. With all due respect, we were not asked why we were traveling without tickets, and instead were told to hand over our passports and to then sign fine documents. My daughters were in tears after the experience as they could not understand what was happening.

I understand now that we made a mistake boarding the train without a ticket – but it was just that – a mistake. We had absolutely no intention of evading payment and I regret that I made a poor decision when on the train platform.

As my daughters had no understanding of the situation and simply followed my direction I would like to appeal the decision to fine them – when if anybody was at fault – it was me. With that said, none of us intended to evade our fare and feel the fines applied, while proper, could be reconsidered in this case."

**Indklagede:** Fastholder kravet om betaling af kontrolafgifterne 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 – before entering the train - to ensure holding a valid ticket, and being able to present it upon request.

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. This basic rule is a prerequisite for the self-service system that applies to travel by public transport. The above mentioned information is available in the folder Metro's travel rules (in Danish) on [www.m.dk](http://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 are instructed to issue fare evasion tickets to all passengers without a valid ticket. They may not distinguish between an intentional or unintentional mistake. They only check the validity of the ticket and if the passenger cannot present a valid ticket – for whatever reason - the staff shall issue a fare evasion ticket.

In the case in question, the complainant and his daughters did not have a valid ticket when boarding the train.

When entering the elevator there is information on the glass to the right of the door. The information is in Danish but is also shown as pictures (pictographs).

The complainant and his daughters chooses to go directly to the platform where there are no ticket sale.

On the platform there is information about the consequence of boarding the metro without a valid ticket. This information is in both Danish and English.

Among the information on the information board **Traffic information** is:

<p>– driftsforstyrrelser Eventuelle ændringer i driften vil fremgå af <a href="http://www.m.dk">www.m.dk</a>.</p> <p><b>Kontrolafgift</b> Husk det er dit ansvar inden påstigning at have en gyldig billet eller kort til rejsen for både dig og dine eventuelle ledsagere. Manglende billet eller kort (samt rejse i spærretiden for dem der rejser på pensionistkort eller med cykel) medfører pr. 1. januar 2013 en kontrolafgift på 750 DKK pr voksen, 375 DKK pr barn/hund og 100 DKK pr cykel og videre rejse i spærretiden er ikke tilladt. Der henvises til <a href="http://www.m.dk">www.m.dk</a> samt rejsereglerne for gældende satser på kontrolafgifter og yderligere information.</p> <p><b>Børn</b></p>	<p><b>Rejsende med Rejsekort</b> Når Rejsekort benyttes i Metroen: <b>Check ind</b> ved rejsens start. <b>Check ind</b> er registreret på chippen i dit rejsekort, når kortlæseren kvitterer med et "ding" og et <b>OK</b> på skærmen. Hvis du fjerner dit rejsekort for hurtigt fra <b>Det Blå Punkt</b>, registreres <b>Check ind</b> ikke. Kortlæseren kvitterer med et "dong" og meddelelsen <b>Fejl. Prøv igen</b>. <b>Check ind</b> hver gang du skifter transportmiddel. <b>Check ud</b> ved rejsens afslutning. Hold dit rejsekort hen på <b>Det Blå Punkt</b>, indtil skærmen viser rejsens pris og et <b>OK</b>. Først da har du checket rigtigt ud. Hvis du ikke foretager et <b>Check ind</b> ved rejsens</p>	<p>Any changes will be announced on <a href="http://www.m.dk">www.m.dk</a>.</p> <p><b>Penalty</b> 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 <a href="http://www.m.dk">www.m.dk</a> and the travel rules for applicable penalty charges.</p> <p><b>Children</b> Up to two children under the age of 12 travel for free in the Metro, if accompanied by a paying adult. Children traveling alone and under the age of 16 must have a children's ticket.</p>
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Of the paragraph **Penalty** it is mentioned that lack of valid ticket or travel card will result in a penalty charge.

Yellow call points can be found several places in 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.

As already mentioned it is the passengers own responsibility to ensure a valid ticket for the entire journey. Furthermore, the passengers must be able to show the valid ticket in case of a ticket inspection.

We must point out that we do not relate to whether the lack of presentation of a valid ticket is due to a conscious or unconscious act and because we want to treat all passengers equally, we only relate to the fact that it is customer's responsibility - before boarding the subway - even to secure a ticket, which can be produced on demand.

According to the metro travel regulations, passengers must hold a valid ticket, and be able to present it upon request. Based on the above mentioned, we find the fare evasion tickets correctly issued and therefore maintain our claim towards the complainant and his daughters of paying the fare evasion tickets of a total of 1500 DKK.

We can offer to divide the fare evasion tickets into 3 monthly installments for each of the fare evasion tickets, if this is of any interest to them. Please note that if the complainant wishes to pay in installments, we charge a fee of 25,- per installment.

Finally we would like to draw the attention to earlier decisions made by the Board of Appeal in cases where the passenger have had no ticket when entering the train and where the decision fell in favor of the respondent company - <http://abtm.dk/afg%C3%B8relser/kontrolafgift-ingen-billet/> and <http://abtm.dk/afg%C3%B8relser/kontrolafgift-ikke-vist-kort/billet/> “

**Til dette har klageren anført:**

“I am somewhat confused reading the correspondence based on earlier information provided. Back on the 11<sup>th</sup> July I submitted my initial plea for leniency and received a message stating that the Metro service had been notified and would respond within ten working days. It seems that any requirement for a timely response has been overlooked and the Metro service has only now responded after more than two months. This makes it hard for me to provide additional accurate supporting information as so much time has passed.

I have read the statement of the Metro service and accept their position regarding the ticketing process. As stated in my previous correspondence, I understand that I made a mistake by boarding a train without better understanding this ticketing process. I had hoped that the Metro service would recognize that as a new traveller on their system, with no prior understanding of the process, a mistake was made – a mistake that might not justify fines of 1,500 Danish Kroner.

I’d like to reiterate that by travelling in a crowded lift from the street to the platform we did not see any guidance regarding ticketing and instead relied on advice provided by a fellow traveller. When we reached the platform we looked for a ticket office or machine but did not see one. It was at that point that we made the mistake of boarding the train that arrived moments after we reached the platform, expecting to pay for our travel either onboard or on arrival at the airport. In hindsight this was a poor decision – but I assure you – not a malicious act.

I therefore kindly request that the case of mine and my daughters mistake be reconsidered based on the circumstances. I understand that rules regarding fare evasion are in place and that people should be treated equitably in these cases. But I would also suggest that sometimes circumstances should allow for leniency and understanding.

It is much appreciated that there is a process in place that allows individuals like myself to address issues such as this when they feel they have been mistreated. I hope that my efforts to resolve this matter in a just and fair manner is not wasting the time and resources of you and your organization.”

### **Hertil har Metro Service svaret:**

First and foremost we must emphasize

- 1) There are no differentiate between reasons for the issue of the fines, when the amount on the actual fine is determined.  
The only difference in the amount of fare evasion tickets is in relation to whether it is issued for an adult, child, dog or bicycle.
- 2) Since we want to treat all passengers equally, we only consider the fact that it is the customer's responsibility - before boarding the train - to secure a ticket, which can be presented on demand. We do not take into consideration whether the lack of a valid ticket is due to a conscious or unconscious act.

The complainant writes in his letter “***we did not see any guidance regarding ticketing and instead relied on advice provided by a fellow traveller.***”

We cannot take responsibility for any incorrect information given by other passengers.

A picture from inside the elevator is shown below:



The picture shows the pictogram for tickets and information on level -1.

### **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.

Fra Metroens rejseregler (forretningsbetingelser):

#### **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 metro-

stationerne 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 metrostationen efter afsluttet rejse. Metro Stewarder kan bede om at se legitimation i tilfælde, hvor der er begrundet tvivl om

- personens alder ved billetkontrol af børnebillet
- personen rejser på en anden passagers periodekort
- personens identitet er korrekt

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.

Kontrolafgiften er samtidig billet til videre rejse til den metrostation, passageren oplyser som bestemmelsesstationen. Se særlige regler for cykler under afsnittet Cykler. Kontrolafgiften er pr. januar 2013 på 750 kr. for voksne, 375 kr. for børn, 375 kr. for hunde og 100 kr. for cykler.

For rejsende, der har checket ind ved rejsens start; men ikke foretaget check ind ved skift til metroen, udstedes kontrolafgift på 50 kr.

Gældende priser og gebyrer kan ses på [m.dk](http://m.dk)

Metroens Stewarder skal altid på forlangende fremvise ID; men er ikke forpligtet til at oplyse navn.

### **Den konkrete sag:**

Klagerne kunne i kontrolsituationen ikke forevise gyldig rejsehjemmel, og kontrolafgiften blev derfor pålagt med rette.

Metro Service har i sagen henvist til, at der på perronen var oplysninger på engelsk om, at man skal have gyldig billet. Imidlertid er informationen på engelsk anderledes end på dansk, og det er i den engelske tekst udeladt, at det er *inden påstigning*, at passageren skal have gyldig billet, således som det står anført i den danske tekst.

– driftsførstyreiser  
Eventuelle ændringer i driften vil fremgå af [www.m.dk](http://www.m.dk).

**Kontrolafgift**  
Husk det er dit ansvar inden påstigning at have en gyldig billet eller kort til rejsen for både dig og dine eventuelle ledsagere.  
Manglende billet eller kort (samt rejse i spærretiden for dem der rejser på pensionistkort eller med cykel) medfører pr. 1. januar 2013 en kontrolafgift på 750 DKK pr voksen, 375 DKK pr barn/hund og 100 DKK pr cykel og videre rejse i spærretiden er ikke tilladt.  
Der henvises til [www.m.dk](http://www.m.dk) samt rejsereglerne for gældende satser på kontrolafgifter og yderligere information.

**Børn**

**Rejsende med Rejsekort**  
Når Rejsekort benyttes i Metroen:  
**Check ind** ved rejsens start.  
**Check ind** er registreret på chippen i dit rejsekort, når kortlæseren kvitterer med et "ding" og et **OK** på skærmen.  
Hvis du fjerner dit rejsekort for hurtigt fra **Det Blå Punkt**, registreres **Check ind** ikke. Kortlæseren kvitterer med et "dong" og meddelelsen **Fejl. Prov igen**.  
**Check ind** hver gang du skifter transportmiddel.  
**Check ud** ved rejsens afslutning. Hold dit rejsekort hen på **Det Blå Punkt**, indtil skærmen viser rejsens pris og et **OK**. Først da har du checket rigtigt ud.  
Hvis du ikke foretager et **Check ind** ved rejsens

Any changes will be announced on [www.m.dk](http://www.m.dk).

**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.

**Children**  
Up to two children under the age of 12 travel for free in the Metro, if accompanied by a paying adult. Children traveling alone and under the age of 16 must have a children's ticket.

Når der gives mulighed for at ankomme med elevator direkte til perronen fra gadeniveau, hvorved man ikke kommer forbi etagen med billetsalg, er det ankenævnets opfattelse, at Metro Service har ansvaret for at informere passagererne tilstrækkeligt tydeligt om, hvor billetter kan købes.

Ved et relativt lille piktogram, som kan overses i en fyldt elevator og ved manglende information på informationstavlen på perronen om, at billetter skal købes en etage over perronniveau, samt manglende information på engelsk, at billetter skal købes *inden påstigning*, var det forståeligt, at klageren og hans døtre steg på metroen i den tro, at de kunne købe billetter om bord.

3 stemmer udtaler herefter:

Imidlertid kunne de i metroen hurtigt have konstateret, at billetter ikke kunne købes om bord, og de burde straks være steget af metroen ved det første stop, hvilket de undlod, idet de blev kontrolleret flere stop senere.

Herefter, og da dette er et område med oplagt mulighed for omgåelse af reglerne om at betale for gyldig rejsehjemmel, finder vi, at der ikke har foreligget sådanne særlige omstændigheder, at klageren og døtrene skal fritages for kontrolafgiften.

Det bemærkes herved, at pligten til at betale kontrolafgift ikke er betinget af, om passageren bevidst har forsøgt at unddrage sig betaling for billetten.

2 stemmer udtaler:

Vi finder under de foreliggende omstændigheder, at Metro Service skal bære ansvaret for, at passagererne ikke havde gyldig rejsehjemmel, da de blev kontrolleret, og stemmer derfor for at give klageren og hans døtre medhold.

Ankenævnet skal i anledning af denne sag henstille til Metro Service om at ændre formuleringen af den engelske tekst i afsnittet *kontrolafgift* på informationstavlerne, idet der ikke som i den danske tekst er anført "*...det er dit ansvar inden påstigning at have en gyldig billet...*", men alene står "*...it is your responsibility to have a valid ticket...*", og dermed ikke, at denne skal være gyldig inden påstigning.

Ankenævnet træffer afgørelse efter stemmeflertallet

#### AFGØRELSE:

Metro Service er berettiget til at opretholde kravet om betaling af kontrolafgifterne på i alt 1.500 kr.

Da klageren ikke har fået medhold i klagen, tilbagebetales klagegebyret ikke, jf. ankenævnets vedtægter § 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 forsikrings-selskab om eventuel forsikringsretshjælp.

På ankenævnets vegne, den 14. januar 2015



Tine Vuust  
Nævningsformand