

## AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

**Journalnummer:** 2014-0281

**Klageren:** XX på egne vegne og på vegne af yy  
England og Spanien

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

**Klagen vedrører:** To kontrolafgifter på 750 kr. for manglende stemping af klippekort.  
Klagerne kunne ikke finde klippemaskinen på Christianshavn st.

**Ankenævnets  
sammensætning:** Nævnensformand, landsdommer Tine Vuust  
Bjarne Lindberg Bak  
Stefan Krebiel  
Asta Ostrowski  
Torben Steenberg

### SAGSFREMSTILLING:

**Klageren reklameret til indklagede:** 3. september 2014

**Klagegebyr modtaget i ankenævnet:** 18. september 2014

**Sagens omstændigheder:** Klageren og dennes kæreste var på en flyrejse fra England til Spanien med få timers ophold i København den 1. september 2014. Til brug for rejsen fra lufthavnen ind til centrum købte de hver et klippekort med 2 klip til 3 zoner til 72 kr. Et sådant klip har samme gyldighed som et 10-klipskort; nemlig 1 time. Klippekortene stemplede de i Lufthavnen kl. 19:30.

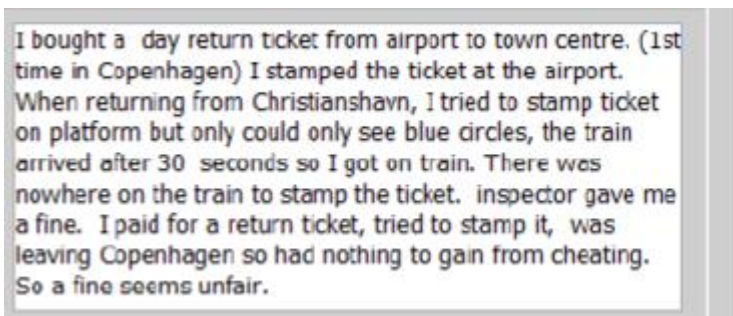


På vejen tilbage til Lufthavnen skulle de med metroen fra Christianshavn st. og tog trappen ned til perronen. Ifølge oplysningerne fra Metro Service befinder der sig klippemaskiner på parterniveau over perronniveau eller henne ved elevatoren på selve perronen.

Klageren har oplyst, at de ikke kunne finde klippemaskinerne men kunne kun se rejsekortstandere. De steg derfor ombord på metroen og regnede med at kunne stemple ombord.

Kl. 23:40 efter metroen havde forladt Femøren st., 5 stationer efter påstigning, var der kontrol af deres rejsehjemmel, og de blev hver pålagt en kontrolafgift på 750 kr. for manglende stempeling af klippekort.

Den 3. september 2014 anmodede klageren og dennes kæreste i separate henvendelser Metro Service om at annullere kontrolafgifterne med følgende begrundelse:



I bought a day return ticket from airport to town centre. (1st time in Copenhagen) I stamped the ticket at the airport. When returning from Christianshavn, I tried to stamp ticket on platform but only could only see blue circles, the train arrived after 30 seconds so I got on train. There was nowhere on the train to stamp the ticket. inspector gave me a fine. I paid for a return ticket, tried to stamp it, was leaving Copenhagen so had nothing to gain from cheating. So a fine seems unfair.

Henholdsvis den 10. og den 11. september 2014 fastholdt Metro Service kontrolafgifterne med disse begrundelser:

“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. Our members of staff have been instructed to give the passenger a reasonable amount of time to find their ticket or clip card. If the passenger is unable to present a valid ticket, the passenger must accept the issue of a fine.

At Christians Havn metro station, you will find 6 ticket/clip card validators.

We do not accept subsequent presentation of tickets or clip cards, as these are not personalised with a name or a photograph of the ticket holder. “

og

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You will find at least two ticket validating machines, where you can stamp the card, at every metro station. Yellow call points can be found on all of our ticket vending machines as well as in several other 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.”

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

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

"I am writing on behalf of my girlfriend and I who were travelling together from Madrid to London with a stopover for a number of hours in Copenhagen airport. I have attached a copy of the flight details to demonstrate this. We were lucky enough to have time to visit the city of Copenhagen which I have wanted to visit for a long time and had never been able to. My girlfriend had never been before either. We both loved the city and would very much like to return.

At Copenhagen airport we both bought a return metro ticket to the center of town for 72Kr each. (I have attached a picture of the tickets we still have). We stamped the ticket at Copenhagen airport before getting on the train without any problems. This was at about 7pm.

We returned from Christianshavn metro station to go to the airport at about 11.15pm. When we came down the escalator to the platform, I took our tickets out from my wallet and looked for somewhere to stamp them but there was nowhere to stamp them at the bottom of the escalator, there were only the blue circles, which I assume is to swipe a card. CCTV footage from the station will show me doing this. There were no train officials around to ask for help, and shortly afterwards a train came along so we got on the train, assuming we would be able to stamp the tickets on the train (as you can do in Madrid and London) but couldn't find anywhere. Likewise, CCTV footage from the train will show me looking to stamp the tickets on the train. At one of the following stations an inspector asked us for our tickets, and we were told we didn't have valid tickets as they had not been stamped and we would have to pay a fine of 750kr each.

This all seems very unfair as we had paid for a return ticket which is the service that we used. We were going to the airport to leave Copenhagen so had absolutely nothing to gain by cheating. And we tried in good faith to stamp the tickets, but being tourists who don't know the system in Copenhagen couldn't find somewhere to stamp it.

#### In Summary

- We paid for a return ticket which is the service we used
- We made an honest mistake, as the systems we are used to in London and Madrid allow for stamping on the train
- We are tourists who are unfamiliar with your procedures
- We are honest people who had nothing to gain by not stamping the return portion, as we were going to the airport to depart the country (flight confirmation attached as proof)

I trust that you will agree that in these circumstances a fine is unfair. And we can assure you that now we are familiar with your procedures, when we return to your beautiful city, we will be very careful to stamp our tickets before boarding a train.

**Indklagede:** Fastholder kravet om betaling af kontrolafgiften og har til støtte herfor anført følgende:

"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, for the entire journey, before boarding the train. Passengers must be able to present a valid ticket on demand to the ticket inspectors.

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 also available in the folder Metro's travel rules (in Danish), which is available 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 trained to issue fare evasion tickets to all customers without a valid ticket. They do not distinguish between an intentional or unintentional mistake. They only check the validity of the ticket. It is unfortunately not sufficient to enquire with a member of the public, regarding ticket information, as they may not be adequately informed concerning the journey the passenger wishes to undertake. In order to ensure correct travel information please contact our Metro staff either in person or via call points on the station or in the Metro trains.

Ticket as well as zone information is available at all stations on our information boards in Danish as well as in English. Passengers are required to use the guidelines in order to find out how many zones are needed for their travel, and how long the ticket or clip card are valid if they themselves are not familiar with the travel system.

See below the texts written in English from the information boards – **Traffic information** - placed at the stations:

**Ticket information**  
Tickets are available from the ticket vending machines for journeys within Greater Copenhagen and for destinations in Denmark and Scania (Skåne) in Sweden. Major Credit cards and Danish coins can be used. Please read more about different types of tickets below and on [www.m.dk](http://www.m.dk).

**Tickets**  
A valid ticket allows you to use bus, other trains and Metro.

**Fare Zones**  
Greater Copenhagen area is divided into zones. The longest trip with the Metro (from Vanløse to Copenhagen Airport) costs 3 zones.  
How to buy a ticket:  
– The red zone on the map shows where you are now  
– Find the destination zone  
– Check the chart to find the number of fare zones, your ticket must be valid for  
– The most expensive fare zone decides your fare  
– The minimum fare is a 2-zone ticket per person

Do you use season card, then the card must cover the zones (marked with white) that you are bypassing or travelling in.

Validity	Tickets	10-trip travel cards
2 zones	1 hr	1 hr
3 zones	1 hr 15 min	1 hr
4 zones	1 hr 30 min	1 hr 30 min
5 zones	1 hr 45 min	1 hr 30 min
6 zones	2 hrs	1 hr 30 min
7 zones	2 hrs 15 min	2 hrs
8 zones	2 hrs 30 min	2 hrs
All zones	2 hrs 45 min	2 hrs

On the same boards it is written:

**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.

**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.

It is the passengers own responsibility to ensure that the clip card is correctly stamped and that it is valid for the entire journey. Furthermore, the passengers must be able to show the valid ticket in case of a ticket inspection.

The used and shown clip cards (72-timer/72-hour) has both been stamped on the station before entering the train when the complainant and his girlfriend went from the airport earlier that day, but not when they returned from Christianshavn station to the airport in the evening – as the complainant himself mentioned in his complaint.

As the complainant and his girlfriend has stamped their clip card at the station in the airport, we must therefore assume that they know how the clip card validation machine look like.

It is correct that there is no validation machines when arriving with the escalators on the platform – they are placed at the middle level where the escalators to the platform are and in front of the elevator.. Had the complainant used the elevator, the validation machines are just in front when going out of the elevator.

The complainant refers to the CCTV footage on the train. We do not have access to neither the CCTV on stations or CCTV on trains when handling cases. This footage is primary for police investigations.

We must point out that we do not take into consideration whether the lack of a valid ticket is due to a conscious or unconscious act. 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.

In conclusion we refer to previous decisions in similar cases where the passenger for one reason or another did not stamped the clip card, and where the decision from the Board of Appeal has fell in favour of the respondent company.

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 therefore maintain our claim towards the complainant and his girlfriend of paying the fare evasion tickets of each 750 DKK

### **Hertil har klageren anført:**

Regarding the comment: *It is correct that there is no validation machines when arriving with the escalators on the platform – they are placed at the middle level where the escalators to the platform are and in front of the elevator.. Had the complainant used the elevator, the validation machines are just in front when going out of the elevator.*

So were we supposed to enter the platform via the elevator in order to find a stamping machine?? Surely the metro service are obligated to provide stamping machines in places that can easily be found, regardless of how somebody enters the platform, especially for those who are not familiar with the system. It doesn't make sense that they have provided the blue circles at the bottom of the escalator but not a ticket stamping machine, therefore I argue that the metro service are at fault.

I have read carefully what is written on the notice boards. Nowhere does it state that *that the ticket must be stamped before getting on the train*, that there are no stamping machines on the actual train. So foreigners who are used to other systems in other countries are not informed of this very important difference. In London for example, there are swiping machines on both the platform and the train for the stations where there are no barriers.

As already explained, we were on the return leg of a return journey with a return ticket that we had already paid for so I don't see how this be considered fare evasion. I have provided hard evidence that we were going to the airport to leave the country so an unstamped ticket would be completely useless to us. There would also be CCTV proof of us looking for somewhere to stamp the ticket,



but Ms Nielsen says she is unable to access this footage. So it is totally obvious to anyone we were not trying to evade a fare, and we are able to prove as much.

When the inspector issued us a penalty ticket we pleaded our case with him. He explained that he has to issue penalty tickets for every single case but that there is an appeal system and he seemed to empathise with us and seemed to think that if we explained ourselves to the appeal board they might renounce the claim to payment of the penalty fare.

I can understand why the metro service have the policy of all the inspectors issuing penalty tickets with the right to appeal. But surely the appeal system should allow for a bit of common sense in not penalising those who can clearly demonstrate they were not trying to cheat. Maybe with the 500 characters we had to appeal, we were not able to fully explain our case.

Regarding the comment: *We must point out that we do not take into consideration whether the lack of a valid ticket is due to a conscious or unconscious act.*

I do know from research on the internet that there are other cases where the metro service have decided not to penalise those who have explained that they made a simple mistake and were not familiar with the metro system. So I'm not quite sure why they feel it is justified to penalise in this particular case.

When doing some google searches there is a lot of information from tourists who have been in a similar situation to ourselves, who feel they have unfairly been asked to pay a very large penalty. There is a lot of bad publicity about this issue and this is likely to do a lot of damage to the tourist industry for Denmark. We were really inspired by the peace and beauty of Copenhagen but obviously, if we are asked to pay fines of nearly 200 euros after having bought tickets for our journey we will not want to return.

In summary, it is clear to anyone we were not trying to cheat, and the metro service have failed to provide a stamping machine in an obvious place and have failed to make us aware that the tickets *must* be stamped before boarding the train. So I appeal to your common sense and good judgment to renounce the claim to payment.

**Til dette har Metro Service svaret:** We hereby sent our final comments regarding the above mentioned case and need initial to apologize for our very late response to the complainants latest mail :

Then complainant writes:

*So were we supposed to enter the platform via the elevator in order to find a stamping machine?? Surely the metro service are obligated to provide stamping machines in places that can easily be found, regardless of how somebody enters the platform, especially for those who are not familiar with the system. It doesn't make sense that they have provided the blue circles at the bottom of the escalator but not a ticket stamping machine, therefore I argue that the metro service are at fault.*

There are several stamping machines at the station. When taking the escalator the stamping machines can be found right in front of the escalators going down to the platform – when taking the elevator the stamping machines are right in front of the door when entering the platform from the elevator.

In case a customer needed information or help there are yellow call points several places at each of our stations.

It is important for us to point out that we do not accuse the complainant of cheating, we only look at facts which is, that the complainant have not paid for the journey.

In conclusion we must state that we unfortunately have referred to the clip card as a 72-hour clip card instead of a 3 zones clip card – we do in spite this not find that this change anything in the specific case.

We must maintain that the complainant has not paid for the journey as the clip card was not stamped before entering the metro when he returned to Lufthavnen station (Copenhagen airport).

Metro Service har efterfølgende pointeret, at der ikke var tale om et 72-timers kort, men et klippekort til 3 zoner til 72 kr.

## **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 dagældende 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 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 metrostationen efter afsluttet rejse. Metro Steward 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 bestemmelsestationen. 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

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

### ***Fra Moviatrafik.dk***

#### ***1- og 2-klips kort***

1- og 2-klips kort kan købes til to, tre og alle zoner til voksne og børn under 16 år. Hvert klip på kortene har samme gyldighed som på 10-klips kort for voksne og børn.

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

Indledningsvist bemærker ankenævnet, at de klippekort, som klagerne købte, er 3-zoners klippekort, hvor et klip har gyldighed i 1 time.

Klagerne kunne i kontrolsituationen ikke forevise gyldig rejsehjemmel, da de ikke havde stemplet deres klippekort, 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 passageren skal have gyldig billet *inden påstigning*, således som det står anført i den danske tekst.

Metro Service har oplyst, at klippemaskinerne befinder sig på plateauet over perronen, og at passagerer, som benytter trappen kommer fordi disse klippemaskiner på vejen til perronen, samt at klippemaskinerne på perronen befinder sig henne ved elevatoren.

Herefter og da klagerne i metroen hurtigt kunne have konstateret, at der ikke var klippemaskiner om bord, burde de straks være steget af metroen ved det første stop, hvilket de undlod, idet de blev kontrolleret 5 stop senere.

På den baggrund og da dette er et område med oplagt mulighed for omgåelse af reglerne om at betale for gyldig rejsehjemmel, finder ankenævnet, at der ikke har foreligget sådanne særlige omstændigheder, at klagerne 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.

Ankenævnet skal i anledning af de seneste sager 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 derfor følgende

### AFGØRELSE

Metro Service er berettiget til at opretholde kontrolafgifterne.

Da klagerne 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 forsikringssselskab om eventuel forsikringsretshjælp.



På ankenævnets vegne, den 4. maj 2015



Tine Vuust  
Nævnshoved