

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

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| Journalnummer: | 2015-0169 |
| Klageren: | XX USA |
| Indklagede: CVRnummer: | Metroselskabet I/S v/Metro Service A/S 21 26 38 34 |
| Klagen vedrører: | Kontrolafgift på 750 kr. Klageren troede, at man kunne købe billet om bord på metroen. |
| Parternes krav: | Klageren ønsker kontrolafgiften annulleret Indklagede fastholder denne |
| Ankenævnets sammensætning: | Nævnensformand, landsdommer Tine Vuust Alice Stærdahl Andersen (2 stemmer) Asta Ostrowski Torben Steenberg |

Ankenævnet for Bus, Tog og Metro har på et møde den 23. februar 2016 truffet følgende:

AFGØRELSE:

Metroselskabet I/S v/Metro Service A/S er berettiget til at opretholde et krav om klagerens betaling af kontrolafgiften på 750 kr.

Klageren skal betale beløbet til Metroselskabet I/S v/Metro Service A/S, som sender et girokort til klageren.

Da klageren ikke har fået medhold i klagen, tilbagebetales klagegebyret ikke, jf. ankenævnets vedtægter § 26, stk. 4, modsætningsvist.

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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.

SAGENS OMSTÆNDIGHEDER:

Klageren, som er bosiddende i USA, rejste den 29. juni 2015 med metroen fra Kgs. Nytorv st. i zone 01 i retning mod Vestamager.

Efter metroen havde forladt Bella Center st. i zone 03, var der kontrol af klagerens rejsehjemmel, hvorpå klageren blev pålagt en kontrolafgift på 750 kr. for manglende rejsehjemmel.

Samme dag anmodede klageren Metro Service om annullering af kontrolafgiften og gjorde til støtte herfor følgende gældende:

"I tried to use my visa card. The English never worked. Nevertheless I used my visa card, but it did not work with your machine (even though it works everywhere else).

I got off at Vestamager, when I tried to get back on I could not use coins because the machine was jammed."

Den 7. juli 2015 fastholdt Metro Service kontrolafgiften med henvisning til selvbetjeningssystemet, hvorefter det er passagerens eget ansvar selv at sørge for gyldig billet til hele rejsen inden påstigning.

Metroservice henviste desuden til de gule opkaldspunkter som er tilgængelige på alle stationer, samt til, at tekniske undersøgelser ikke havde vist fejl på billetautomaten på det relevante tidspunkt.

ANKENÆVNETS BEGRUNDELSE:

Klageren steg om bord på metroen uden billet, da han efter det oplyste ikke kunne købe billet med sit VISA-kort i billetautomaten på Kgs. Nytorv st.

Ifølge oplysningerne fra Metro Service er der ikke registeret fejl på billetautomaterne på Kgs. Nytorv st. på det omhandlede tidspunkt.

Ankenævnet lægger til grund, at klageren efter ombordstigning måtte have kunnet konstatere, at der ikke var mulighed for at købe billet om bord på metroen. Han burde derfor ikke været blevet om bord på metroen, men skulle være steget ud for at købe billet. Klageren undlod dette og blev i stedet på metroen fem stop, hvor han blev kontrolleret efter Bella Center st.

Der findes herefter ikke at foreligge sådanne særlige omstændigheder, som kan fritage klageren for den pålagte kontrolafgift.

RETSGRUNDLAG:

Ifølge § 2, stk. 1, jf. § 3 nr. 3 i lovbekendtgørelse nr. 686 af 27. maj 2015 om lov om jernbaner, gælder loven også for metroen. Af § 14 stk. fremgår jernbanevirksomhedernes adgang til at opkræve kontrolafgift og ekspeditionsgebyr for passagerer, der ikke foreviser gyldig rejsehjemmel (billetter og kort). Af § 14 stk. 4 fremgår det, at transportministeren fastsætter nærmere regler om jernbanevirksomhedens adgang til at opkræve kontrolafgift og ekspeditionsgebyr, jf. stk. 1.

I henhold til § 4 i bekendtgørelse nr.1132 om kontrolafgifter af 08. september 2010, fastsætter jernbanevirksomheden bestemmelser om kontrolafgift i forretningsbetingelserne.

Trafikselskaberne i Hovedstadsområdet har vedtaget fælles rejseregler, hvori hjemmelen til udstedelse af kontrolafgift fremgår. Det anføres således bl.a., at passageren skal have gyldig rejsehjemmel til hele rejsen, og at denne skal kunne vises frem for kontrolpersonalet under hele rejsen, ved udstigning, i metroen indtil metroens område forlades, og i S-tog og lokalbanetog indtil peronen forlades.

Passagerer, der ikke på forlangende viser gyldig billet eller kort, herunder korrekt ind-checket rejsekort, skal betale en kontrolafgift på 750 kr.

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren har anført følgende:

".. I was on my first visit to Copenhagen for four days from June 28 to July 1, when I received the fine... On the day after we arrived I entered the Kongens Nytorv Metro station near the Angleterre Hotel, where we were staying, for my first adventure on your mass transit system. I planned to travel to Vestamager

I attempted to buy a Metro ticket at the ticket machine in the station with a credit card. I could not make the ticket machine work, and was not able to understand the Danish instructions. Please understand that it is not easy for an English-speaking foreigner to figure out how to navigate your public transportation system. The "self-service" aspect of it may be simple for a Dane but not for the uninitiated.

There was a long line of impatient people behind me. I was frustrated and did not see any official person to ask for help.

The subway systems with which I am familiar in the U.S. have turnstiles that require you to swipe a card to get on board. Yours did not; rather they allow passengers to board freely. It is because of this that I assumed I would be able to pay my fare once I was on board, and I hopped onto the train.

When the conductor/official came to me I explained to him that I was unable to purchase a ticket at the machine and asked to pay the fare. He said this was not allowed and wrote up a fine. I felt that this was unfair because I was legitimately confused by your system. Therefore I filed a complaint at a Metro office. I have since received the response below rejecting the complaint."

Indklagede har anført at:

"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 Common 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 is met by a steward inspecting tickets on the 29th of June 2015 at 14.10 between Bella Center Station and Vestamager Station. As the complainant is not able to present a valid ticket, a fare evasion ticket is issued, according to the travel regulations.

On background of the complainant's request we asked our technical department about whether there were errors reported at the ticket machines at Kongens Nytorv Station where the complainants journey started, but there has been no problems registered at the time described. Moreover, there are altogether three ticket machines at Kongens Nytorv Station, so if one machine is out of order, one must try the others. The technicians also reports that there has been many transactions paid with both cards and coins on all three machines and that none of the machines reports any fruitless attempts to pay with cards.

This a photo taken at Kongens Nytorv Metro Station, the red circles marking the ticket machines, the yellow call point and the information board:



At all Metro Stations yellow call points are available should any passenger need assistance, i.e. not being able to buy a ticket.



**Henvendelser til Metroens kontrolrum kan ske fra opkaldsstedet
– tryk INFO. Ved akut fare – tryk ALARM.**
Inquiries to the Metro control room may be made from the call point by
pressing INFO. In case of emergency, press ALARM.

Also at all Metro Stations there are information boards in Danish as well as in English, telling how to buy tickets, what to do if in need of assistance and what the consequence of not having a valid ticket might be. Inserted are details from the Information boards:

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.

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 |

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.

In his request the complainant also writes that, when he would return to central Copenhagen from Vestamager Station, he tried to buy a ticket with coins, apparently with no luck. We have also had our technical department to look into that, but no problems were registered in this case either. Now of course, we cannot know whether the complainant was already in possession of Danish coins on his departure from Kongens Nytorv Station, but we notice that he did not try to buy his ticket with cash at Kongens Nytorv Station when he could not get his Visa card to work at the beginning of the journey.”.

På ankenævnets vegne



Tine Vuust
Nævnetsformand