

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

Journalnummer:	2015-0205
Klageren:	XX England
Indklagede:	Metroselskabet I/S v/Metro Service A/S
CVRnummer:	21 26 38 34
Klagen vedrører:	Kontrolafgift på 750 kr. for at rejse uden billet, da han troede, man kunne rejse to på et citypass.
Parternes krav:	Klageren ønsker kontrolafgiften annulleret Indklagede fastholder denne.
Ankenævnets sammensætning:	Nævnformand, 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 med stemmeflertal 3-2 truffet følgende:

AFGØRELSE:

Metroselskabet I/S v/Metro Service A/S er berettiget til at opretholde kravet 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 § 24, stk. 2, 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 forsikrings-selskab om eventuel forsikringsretshjælp.

SAGENS OMSTÆNDIGHEDER:

Klageren, som er bosiddende i England, rejste den 5. juni 2015 sammen med sin ægtefælle med metroen fra Lufthavnen st. i zone 04 i retning mod Kgs. Nytorv st. i zone 01.

Forinden havde de på Lufthavnen st. købt et citypass gyldigt i 72 timer. Et citypass er en billet, som kan benyttes af ihændehaveren til zonerne 01, 02, 03 og 04 inden for det gyldige tidsrum. Billetten kan ikke anvendes som rejsehjemmel af flere personer.

Efter metroen havde forladt Lergravsparken st. i zone 01 var der kontrol af klagerens rejsehjemmel, hvorpå han blev pålagt en kontrolafgift på 750 kr., da han sammen med sin ægtefælle alene kunne fremvise ét gyldigt citypass.

Stewarden har på den elektroniske kontrolafgift noteret: "havde lest paa nettet at de kunne validere billetten ved hver rejse for 2 pers."

Den 14. juni 2015 anmodede klageren Metro Service om annullering af kontrolafgiften og gjorde følgende gældende:

"Bought 72-hr ticket (200DKK)for 1 adult instead of 10-journey ticket to be used by 2 of us by mistake from Airport machine. Tried to clip it before getting on metro but, as it was too big, asked guard on duty who told us there was no need to clip it-'just show it' he said so we got on train believing we were OK to travel. Only used for 1 journey from Airport as no wish to buy further tickets after this most unpleasant start to visit-already out of pocket-unfair fine should be disregarded."

Den 6. juli 2015 fastholdt Metro Service kontrolafgiften og gjorde til støtte herfor følgende gældende:

"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.

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."

ANKENÆVNETS BEGRUNDELSE:

Ankenævnet lægger til grund, som oplyst af klageren, at han og hans ægtefælle inden afrejsen til Danmark havde besluttet at købe et 10-turs klippekort, efter at have læst om det på nettet. Klippekort kunne anvendes af flere rejsende.

Da de ankom til Danmark, var 10-turs klippekortene imidlertid ikke længere til salg, da kortene var udfaset.

3 voterende udtaler herefter:

Det er vores opfattelse, at klageren ikke uden yderligere undersøgelse kunne gå ud fra, at det produkt, som de herefter besluttede sig for at købe i en automat – et citypass, havde samme gyldighed, som et 10-turs klippekort.

Klageren har oplyst, at de havde for travlt til at lægge mærke til den store service desk i Lufthavnen inden nedgangen til metroen, hvor de havde kunnet søge personlig hjælp med billetteringen.

Når man køber et citypass i automaten, står der et 1-tal i venstre margin med piletaster for "more" eller "less" til brug for indtastning af det antal citypass, som ønskes. Klageren købte ét citypass i automaten. Citypass er kun gældende for én passager. Det er vores opfattelse, at der ikke var noget i denne ekspedition, som skulle have indikeret over for klageren, at han havde købt rejsehjemmel til mere end én person.

I den første henvendelse til Metro Service anførte klageren, at de spurgte en "guard on duty" om, hvor de kunne stemple citypasset, og at den ansatte oplyste "just show it".

De spurgte efter vores opfattelse ikke medarbejderen om det relevante; nemlig om hvilken rejsehjemmel de skulle købe i stedet for et 10-turs klippekort. Herefter er der ikke grundlag for at fastslå, at ansvaret for, at klageren steg ombord på metroen uden gyldig rejsehjemmel, påhvilede Metro Service og ikke klageren.

Klageren kunne i kontrolsituationen ikke fremvise gyldig rejsehjemmel, hvorfor kontrolafgiften blev pålagt med rette.

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

Vi finder herefter, at der ikke har foreligget sådanne særlige omstændigheder, at klageren skal fritages for kontrolafgiften.

Klageren fandt ikke informationen om køb af klippekort på Metro Services hjemmeside, men Ankenævnet kan konstatere, at det rent faktisk af Metro Services hjemmeside fortsat fremgår, at klippekort stadig kan købes: <http://intl.m.dk/#!/search?q=clip>. Dette bedes slettet.

2 stemmer:

Det er vores opfattelse, at uanset at klageren og hans ægtefælle i meget god tid inden afrejsen til Danmark undersøgte, hvilken billettype de ville købe, har de gjort, hvad der kunne kræves; nemlig at undersøge, hvorledes man skaffer sig gyldig rejsehjemmel. Ved denne undersøgelse fremgik det, at de dagældende klippekort var gyldige til rejse for mere end én passager, hvis der blev stemplet tilstrækkeligt antal zoner.

Da klageren og ægtefællen ikke kunne købe det klippekort, som de havde forventet, købte de i stedet i automaten et citypass til 200 kr. under "day tickets" og spurgte en medarbejder om, hvor de kunne stemple dette. Her fik de oplyst, at det blot skulle forevises.

Det kan ikke forventes eller kræves, at en passager, som har modtaget rådgivning om billettering af en metroansat, derudover skal foretage opkald via de gule opkaldspunkter for at søge vejledning som anført af Metro Service.

Vi finder på den baggrund, at klageren havde en berettiget forventning om, at han ved køb af citypass til 200 kr. havde købt rejsehjemmel til såvel sin ægtefælle som til sig selv. Herefter skal Metro Service frafalde kontrolafgiften.

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. 1, fremgår jernbanevirksomhedernes adgang til at opkræve kontrolafgift og ekspeditionsgebyr for passagerer, der ikke foreviser gyldig rejsehjemmel (billetter og kort). Jf. § 14 stk. 4, fastsætter transportministeren 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 at:

I maintain that this fine is extortionate and unjustified.

Buying an incorrect ticket when we had just arrived at Copenhagen Airport was an innocent mistake. We certainly had no intention of cheating the system.

Prior to our 3-day visit we researched on the internet and our understanding was that we could buy a **10-journey ticket to be used by both my wife and I** for the 3 days, and that it should be clipped before first use.

We were looking for a manned sales desk at the Airport to ask for this ticket. This would have clarified the situation and we would have bought the correct ticket. However, in using the unfamiliar self-service machine, it turns out we bought the **72-hour (DKK200) ticket for only 1 traveller** by mistake. We tried to clip it in the machine before getting on the metro, but as it was too big, we asked the guard on duty at the platform and he told us there was no need to clip it – it would be ok for both of us so ‘just show it’ he said, so we got on the train in all faith that we were OK to travel. So you can imagine our shock and horror to be stopped by the Inspector, especially after we had checked with the guard.

We were not even given the opportunity to purchase another (correct) ticket, which I would willingly have done, once our mistake was pointed out.

This fine is totally unfair on tourists and old-age pensioners like ourselves who have made a simple error in purchasing incorrect travel tickets from machines which are difficult and confusing to use. Indeed after this experience we actually never used the purchased DKK200 ticket again on that trip. It was a very unpleasant start to our visit and we trust you will understand our distress and disregard this fine.

Indklagede har anført at:

“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 available on 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 is trained to issue fare evasion tickets to all customers without a valid ticket. They do not distinguish between an intentional or unintentional mistake.

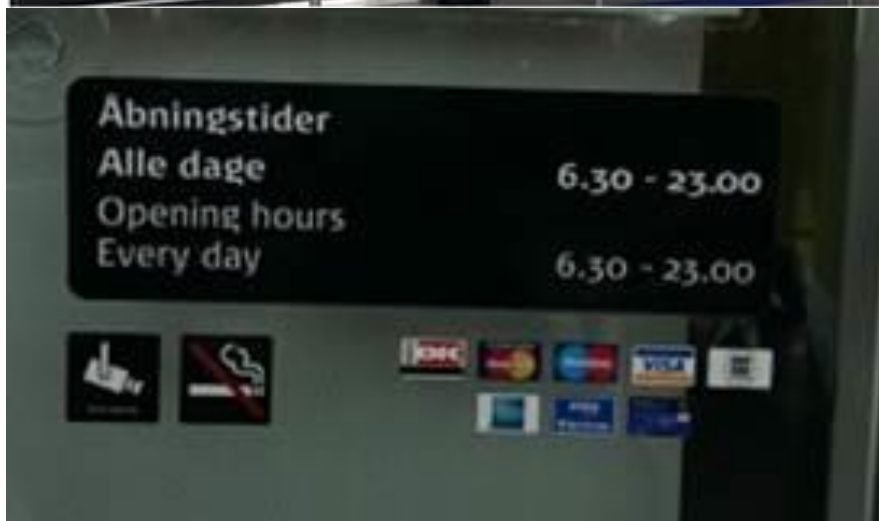
If in doubt one can use a call point. Call points can be found on all of our ticket vending machines, as well in several other places in every one of our stations. These call points can be used if the passenger requires assistance or guidance. The call point will connect the passenger directly to an operator in our control tower, which is manned 24 hours a day.

In the case in question the complainant and his wife was inspected on the 5th June 2015 at 17.41 between Lergravsparken station and Kgs. Nytorv station. The complainant and his wife presented

one (1) 72-hour ticket valid for a single person only. As only one of the companions was in possession of a valid ticket, a fare evasion ticket was issued, according to the travel regulations.

In his complaint to the appeal board the complainant writes : *'We were looking for a manned sales desk at the Airport. This would have clarified the situation'*.

However, there is a large manned sales desk at the Airport, and it is situated so that everyone who is on their way to the metro pass right by it. The sales desk is open seven days a week between 6.30-23.00, see photos.

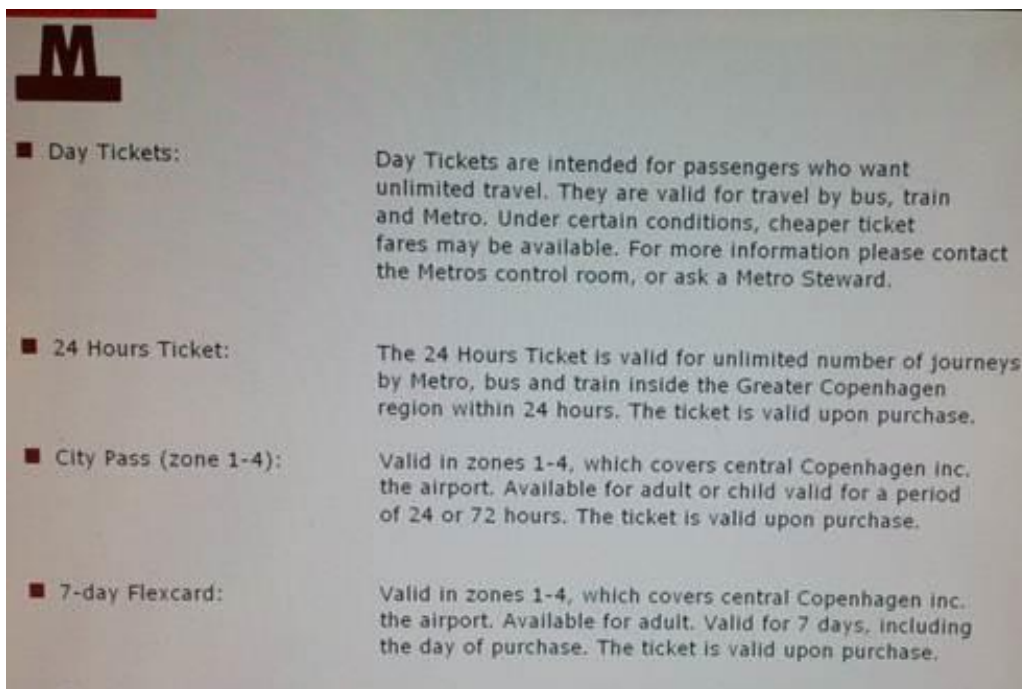


In his letter to the appeal board the complainant also mentions that he, prior to the arrival in Copenhagen, researched on the internet what kind of tickets to be used during their stay.

Of course we cannot know when the complainant's investigation took place. However, after 9 February 2015, it was no longer possible to buy 10-trip cards / tickets in Copenhagen, which all the transport companies in the capital informed on their respective websites. We therefore assume that the complainant have either not sought the information in the last four months before the trip or have not sought information at the appropriate places.

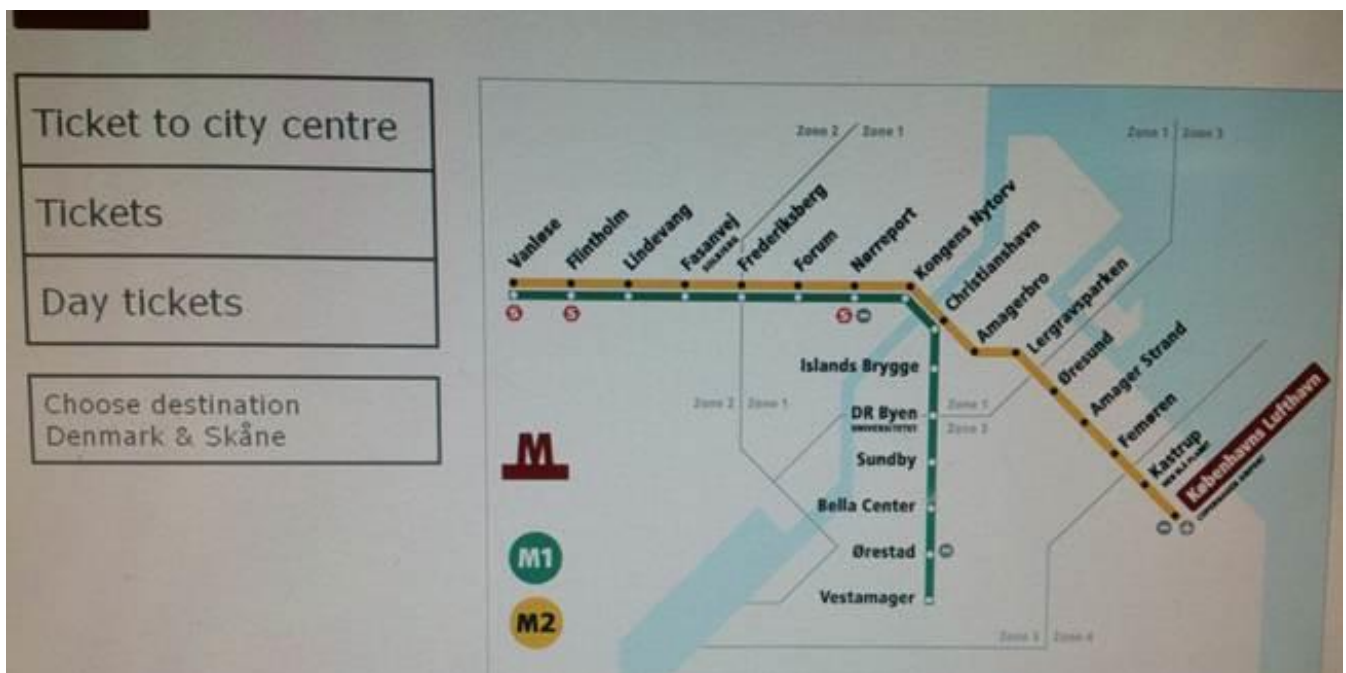
The complainant also writes that he asked a guard on the platform if he should clip the 72-hour ticket he had bought. The guard said correctly, that a 72-hour ticket needs no clip as the validity starts at the time the ticket is purchased and printed from the vending machine. See attached screenshots from a vending machine that illustrates the options when purchasing a ticket as well

as the screen clearly informs that the ticket purchased is for one adult and that it is validated at the time of purchase:



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- Day Tickets:** Day Tickets are intended for passengers who want unlimited travel. They are valid for travel by bus, train and Metro. Under certain conditions, cheaper ticket fares may be available. For more information please contact the Metros control room, or ask a Metro Steward.
- 24 Hours Ticket:** The 24 Hours Ticket is valid for unlimited number of journeys by Metro, bus and train inside the Greater Copenhagen region within 24 hours. The ticket is valid upon purchase.
- City Pass (zone 1-4):** Valid in zones 1-4, which covers central Copenhagen inc. the airport. Available for adult or child valid for a period of 24 or 72 hours. The ticket is valid upon purchase.
- 7-day Flexcard:** Valid in zones 1-4, which covers central Copenhagen inc. the airport. Available for adult. Valid for 7 days, including the day of purchase. The ticket is valid upon purchase.



Ticket to city centre
 Tickets
 Day tickets
 Choose destination
 Denmark & Skåne

M

M1
M2

Vanløse, Flintholm, Lindervang, Fasanvej, Frederiksberg, Forum, Nørreport, Kongens Nytorv, Christianshavn, Amagerbro, Lergravsparken, Ørestad, Amager Strand, Femern, Kastrup, København Lufthavn, Vestamager, Ørestad, Bella Center, Sundby, DR Byen, Islands Brygge.

Zone 2, Zone 1, Zone 3, Zone 4

Ticket to city centre	Adult (16+)
Tickets	Child
Day tickets	
Choose destination Denmark & Skåne	

Please note all tickets in this category ARE VALIDATED AT THE TIME OF PURCHASE

Ticket to city centre	Adult (16+)	24 hour city pass (zone 1-4)
Tickets	Child	72 hour city pass (zone 1-4)
Day tickets		24 hour ticket (all zones)
		7 day flexcard (zone 1-4)
Choose destination Denmark & Skåne		

Please note all tickets in this category ARE VALIDATED AT THE TIME OF PURCHASE

MORE	LESS	COUNT	TYPE	PRICE
↑	↓	1	Day Tickets, 72 hour city pass (zone 1-4), Adult (16+)	Kr. 200,00
Pay				Kr. 200,00

MORE	LESS	COUNT	TYPE	PRICE
↑	↓	1	Day Tickets, 72 hour city pass (zone 1-4), Adult (16+)	Kr. 200,00
Pay				Kr. 200,00

The complainant recalls that he and his wife are tourists and old-age pensioners and therefore feel unfairly treated.

We are sorry if the complainant feels badly treated, but must draw attention to the fact, that the rules about being in possession of a valid ticket applies for everyone."

Til dette har klageren anført:

"In reply to the comments from the train company, there are several points we wish to emphasise.

1. Firstly, we feel we are not deserving of a huge 'fare evasion' fine. This was definitely not fare evasion as we did pay DKK200 for the journey from the Airport. As it turned out, this was the only time the ticket was used, as we were so shocked at the fine and being treated like criminals that we were not inclined to use the transport system further during our short stay.

2. Airports are always stressful and, in our hurry to get to an arranged meeting, we admit we did not see or read any 'information boards', 'manned sales desk' or 'call point' and were forced to use the self-service machine we noticed in passing.

3. The information we researched on the internet could well have been pre-February 2015, when we first planned our visit, and it was therefore confusing not to be able to obtain the 10-trip ticket covering both of us, that we had decided on.

4. However, having bought the 72-hour pass from the machine (the option we thought would best suit our 3-day stay), we were confused when we could not clip it, but did manage to check with the guard on the platform who assured us the ticket would be OK for BOTH OF US. Otherwise we would most certainly have bought another ticket before boarding the train.

It seems that there have been misunderstandings on both sides. In hindsight, we take responsibility for not being fully aware of up-to-date information, but we also feel that the guard we consulted (and ultimately the train Company) should take responsibility for confusing the issue further by assuring us that we would BOTH be OK to travel with the ticket we showed him.

We therefore feel that we were only partially to blame for our error and confusion over the correct tickets to use. We boarded the train believing, as the guard seemed to be confirming, that our ticket would cover us both.”.

Hertil har Metro Service svaret:

“Although we understand that one can be busy, it cannot be used as an excuse for not having acquired the correct ticket before the trip begins.

It is our opinion that the airport offers all visitors good opportunities to be served and to get answers to all questions about tickets, so that one is not forced to use the self-service machines.

Passengers should do an effort in familiarizing themselves with a transport system, when coming to a foreign country. We note that the complainant states that he sought information on the internet 4-5 months prior to travelling, but in our opinion the complainant has not made reasonable efforts to understand the transport system in Copenhagen.

As mentioned earlier, it has not been possible to buy 10-trip cards in Copenhagen after 9th February 2015. But already several months in advance that information was to be read on all the official websites of public transportation in Copenhagen (Movia, DSB and Metro).

As stated in the previously submitted material, the display on the machine clearly shows that a 72-hour ticket at a cost of 200 kroner is for a single person only.”.

Til dette har klageren anført:

“Further to my recent communication I have now found the information (Copenhagen city Net guide) we relied upon and which led to our mistake. We admit to erroneously using 'old' information, but at the time did not realise this. Please see attached copy of the guide with arrow pointing out the part that led us to believe that the ticket we purchased would cover both of us. ”

Klageren vedhæftede følgende:

FARES

Zones

The Greater Copenhagen Region is divided into 95 zones. At bus stops and stations, you will find coloured zone maps where you can calculate the fare of your journey. The fare depends on the number of coloured zones (ring zones) you travel through. You pay for a minimum of two zones, and a maximum of seven zones (all zones). You can combine trains, buses and the Metro as much you like, as long as your ticket is valid time wise and zone wise.

Cash ticket

You can buy a cash ticket for the number of ring zones you wish to travel in. Two children under the age of 12 travel for free when accompanied by an adult with a cash ticket. Youths under the age of 16 pay approximately half the full cash ticket fare. Two youths aged between 12 and 15 (inclusive) may travel together on an adult cash ticket.

FlexCard

A transferable travel card which allows unlimited travel for a period of seven days in the zones covered by the card. Two children under the age of 12 travel for free when accompanied by an adult with a FlexCard. Two youths aged between 12 and 15 (inclusive) may travel together on a FlexCard.

24-hour ticket

Valid for 24 hours within the entire Greater Copenhagen Region. Two children under the age of 12 travel for free when accompanied by an adult with a 24-hour ticket. Youths under the age of 16 pay half price for the 24-hour ticket. Two youths aged between 12 and 15 (inclusive) may travel together on an adult ticket. Remember to stamp the ticket at the beginning of your journey at the yellow meters located at stations and on buses.

10-clip card

A 10-clip card is valid for a maximum of 10 journeys and is available for the number of ring zones you want to travel within.

By using a 10-clip card, you save approximately 40% per journey compared to the fare of a cash ticket. Two children under the age of 12 travel for free when accompanied by an adult with a 10-clip card. Youths under the age of 16 pay approximately half price for a 10-clip card for two or three zones. Two youths aged between 12 and 15 (inclusive) may travel together on an adult clip card.

It is possible to extend a clip card's validity. For example, by stamping a 3-zone clip card twice, you have extended the validity to six ring zones.

Likewise, more than one person may travel on one clip card. For example, three people can travel through three zones by stamping a 3-zone card three times.

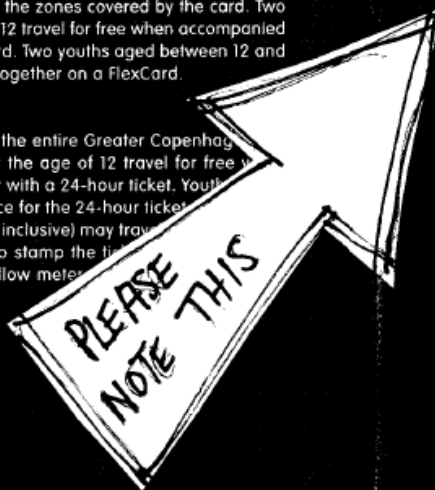
Remember to stamp the card at the beginning of your journey at the yellow meters located at stations and on buses.

Copenhagen Card

The Copenhagen Card is valid for all travel in the Greater Copenhagen Region. Furthermore, the Copenhagen Card gives free or reduced admission to a number of museums and sights.

Excess fares at night

If you use a cash ticket or a 10-clip card, there is an excess fare (100%) when travelling by night buses and by Metro between midnight and 6am.



Til dette har Metro Service svaret:

"We do not find the complainant's latest material relevant to the case as he/they have previously agreed to, not to have sought timely information about public transport in Copenhagen before his/their trip to Denmark."

På ankenævnets vegne

Tine Vuust
Nævnensformand