

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer:	2016-0005
Klageren:	XX Sydafrika
Indklagede:	Metroselskabet I/S v/Metro Service A/S
CVR nummer:	26 21 38 34
Klagen vedrører:	Kontrolafgift på 750 kr. for manglende forevisning af gyldig rejsehjemmel. Den gyldige billet lå i klagerens jakkelomme og blev efterfølgende indsendt.
Parternes krav:	Klageren ønsker kontrolafgiften annulleret Indklagede fastholder denne
Ankenævnets sammensætning:	Nævnensformand, landsdommer Tine Vuust Asta Ostrowski Torben Steenberg Bjarne Lindberg Bak Alice Stærdahl Andersen

Ankenævnet for Bus, Tog og Metro har på et møde den 14. juni 2016 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 Metro Service, som sender et girokort til klageren.

Da klageren ikke har fået medhold i klagen, tilbagebetales klagegebyret ikke, jf. ankenævnets vedtægter § 24, stk. 2, modsætningsvist.

- oOo -

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 ikke-dansktalende fra Sydafrika, var den 27. november 2015 i transit i København og besluttede at besøge byen. Han købte en 24-timers billet og rejste med metroen. Da metroen havde forladt Amager Strand st., var der kontrol af klagerens rejsehjemmel. Her blev han pålagt en kontrolafgift på 750 kr. for manglende forevisning af rejsehjemmel, fordi han ikke kunne finde sin billet.

Stewarden har som årsag på den elektroniske kontrolafgift noteret: "intet forevist".

Klageren anmodede den 8. december 2015 Metro Service om annullering af kontrolafgiften og anførte bl.a. til støtte herfor, at han havde købt en 24-timersbillet, som han ikke kunne finde ved kontrollen men fandt efterfølgende i sin jakkelomme. Han vedlagde desuden dokumentation for købet af billetten.

Den 9. december 2015 fastholdt Metro Service deres kontrolafgift 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 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 regarding tickets, as well as the zone system, is available by the entrance at every station.
Yellow call points are available at all our stations as well. They will connect you to an operator in our control tower in case you need assistance. These are manned 24 hours.
Considering the above, you will be charged the full amount of the fine, which we request that you pay as soon as possible."

ANKENÆVNETS BEGRUNDELSE:

Klageren kunne ved kontrollen i metroen den 27. november 2015 ikke forevise gyldig rejsehjemmel, fordi han ikke kunne finde sin 24-timers billet.

Kontrolafgiften blev dermed pålagt med rette.

Klagerens efterfølgende indsendelse af sin billet og kvittering for køb af denne kan efter ankenævnets faste praksis ikke føre til et andet resultat, idet efterfølgende forevisning af klippekort eller upersonlige billetter ikke kan tages i betragtning ved bedømmelsen af, om der ved kontrollen blev forevist gyldig rejsehjemmel.

Dette er et område med stor mulighed for omgåelse af reglerne om ved kontrollen at forevise gyldig billet, hvorfor ankenævnet finder, at der ikke er grundlag for at fravige reglerne om, at passageren selv bærer ansvaret for korrekt billettering.

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 anfører at:

"Was transiting through Copenhagen en route to South Africa. Whilst waiting for my flight I decided to visit take the opportunity to see your beautiful capital city. I purchased a day travel card and visited the Kongens Nytorv area as recommended by the ticket sales officer. On the Metro approaching the Airport an inspector was checking tickets. I, in the unfamiliar environment and the concern to get to my flight on time, in that moment I could not locate my ticket and was issued a fine. En route to Cape Town after the relief of making my flight I found the ticket in one of my jacket pockets. On return to South Africa I appealed the fine and scanned my ticket, payment receipt, debit card used (which is in my name) and my proof of identification. I was disappointed that in my attempt to experience some of Copenhagen using the Metro I couldn't locate my ticket, which I had, due to being stressed and I have subsequently been penalised.

I appealed to the Metro to have the fine revoked as I was in possession of a valid ticket at the time which I could not locate. My ambition is that you will reconsider this decision and out of goodwill to a clumsy tourist you will excuse me from having to pay the fine. If it would help I am happy to post the original documents to you. Thank you for your time and consideration. Wishing you a happy an New Year."

Indklagede anfører 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 and is met by a steward inspecting tickets on the 27th of November 2015 at 14.33 between Amager Strand station and Lufthavnen station. As the complainant is not able to present a ticket, a fare evasion ticket is issued, according to the travel regulations.

Metro operates in line with the other public transport means in the capital region by a self-service system where it is the passenger's responsibility to ensure they have a valid ticket, which can be shown on demand.

The passenger must make sure that the ticket is correct (date, time and zone), and applies to the entire journey. A ticket is impersonal, and therefore subsequent presentation is not accepted. A ticket is valid only to the ticket holder at time of inspection.

The rules that the ticket must be produced on demand and what could happen if the passenger is not able to, appears on the information boards available at all metro stations, and in The Common Travel rules for DSB, Metro and Movia, which is available on Metro's website www.m.dk (see below the information board from Kongens Nytorv station).

If not able to show a valid ticket, a fine must be accepted.



and the text in close-up

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.

Since a ticket is impersonal, it does not change the fact if the complainant can show a purchase of a ticket i.e. bank statement or the like.

Finally, we must draw attention to previous comparable complaints (2015-0152 and 2015-0161), where the decisions were made in favor of the respondent company."

På ankenævnets vegne



Tine Vuust
Nævnshoved