

## AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

<b>Journalnummer:</b>	2016-0097
<b>Klageren:</b>	XX Sverige
<b>Indklagede:</b>	Metroselskabet I/S v/Metro Service A/S
<b>CVRnummer:</b>	21 26 38 34
<b>Klagen vedrører:</b>	Kontrolafgift på 750 kr. grundet manglende billet. Klageren glemte at tage billetten med fra automaten
<b>Parternes krav:</b>	Klageren ønsker kontrolafgiften annulleret Indklagede fastholder denne
<b>Ankenævnets sammensætning:</b>	Nævnshoved, landsdommer Tine Vuust Asta Ostrowski Torben Steenberg Bjarne Lindberg Bak Alice Stærdahl Andersen

Ankenævnet for Bus, Tog og Metro har på sit møde den 7. november 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 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](http://www.domstol.dk), [www.advokatsamfundet.dk](http://www.advokatsamfundet.dk) og /eller eget forsikringssselskab om eventuel forsikringsretshjælp.

### **SAGENS OMSTÆNDIGHEDER:**

Klageren, som er engelsktalende studerende i København, rejste d. 30. april 2016 med metroen fra Fasanvej st. til Lufthavnen st. Klageren købte inden rejsen en 3 zoners billet til 48 kr., men glemte billetten i automaten, da toget var ved at køre.

Efter at Metroen havde forladt Forum st., var der kontrol af klagerens rejsehjemmel, og da hun kunne ikke fremvise billet, blev hun kl. 00.55 pålagt en kontrolafgift på 750 kr. for manglende rejsehjemmel. Stewarden har på den elektroniske kontrolafgift noteret:

”påstår hun har købt billet for 20min siden men glemt den i automaten”.

Klageren anmodende den 1. maj 2016 Metro service om annullering af kontrolafgiften og anførte til støtte herfor følgende:

”  
I bought a ticket for 3 zones for 48 kronor from Fasanvej station on April 28th at midnight. When I purchased the ticket I was worried as I was locked out of my apartment in Valby as I left my keys inside by mistake so I bought a ticket to Lufthaven to stay with a friend overnight. Due to my stress, I forgot to take my ticket out of the machine after I bought it since the train was about to depart so I rushed inside without my ticket. When the ticket agent came into the train I told her I forgot my ticket due to my stress and she told me to appeal the ticket by providing a copy of my account to show that the ticket was purchased. When I checked my Nordea account, it shows that the ticket was purchased from Fasanvej but the date when they will charge me is May 2nd (although today is May 1st) but the day I bought it was April 29th. However I am sure this is the ticket. *I would like to appeal it as I always buy my tickets and never cheated on the metro.* “

Metro Service fastholdt den 03. maj 2016 kontrolafgiften med henvisning til selvbetjeningsprincippet, samt at fremvisning af kontoudtog ikke er gyldig rejsehjemmel.

### **ANKENÆVNETS BEGRUNDELSE:**

Klageren kunne ved kontrollen i metroen d. 30. april 2016 ikke forevise gyldig rejsehjemmel, da hun ifølge egne oplysninger havde glemt sin billet i billetautomaten efter købet. Kontrolafgiften blev hermed pålagt med rette.

Det af klageren anførte om, at stewarden ved afgivelsen af kontrolafgiften skulle have vejledt om, at hun kunne få annulleret sin kontrolafgift ved indsendelse af bankudskrift, kan ikke føre til et andet resultat, idet fremlæggelse af kontoudskrift efter ankenævnets faste praksis ikke kan medtages i bedømmelsen af, om klageren var i besiddelse af gyldig rejsehjemmel. Men ankenævnet bemærker, at hvis stewards oplyser passagerer om, at det vil være tilstrækkeligt at indsende et bankudskrift ved klage over en kontrolafgift for manglende billet, må Metro Service instruere stewards i at ophøre dermed.

Pligten til at betale kontrolafgift er ikke betinget af, om passageren bevidst har forsøgt at unddrage sig betaling for rejsen, og da dette er et område med mulighed for omgåelse af reglerne om at kunne forevise gyldig rejsehjemmel, har der ikke foreligget sådanne særlig omstændigheder, at klageren skal fritages for 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 anfører følgende:**

“ I bought a ticket for 3 zones for 48 kroner from Fasanvej station on April 28th at midnight. When I purchased the ticket I was worried as I was locked out of my apartment in Valby as I left my keys inside by mistake so I bought a ticket to Lufthaven to stay with a friend overnight. Due to my stress, I forgot to take my ticket out of the machine after I bought it since the train was about to depart so I rushed inside without my ticket. When the ticket agent came into the train I told her I forgot my ticket due to my stress and she told me to appeal the ticket by providing a copy of my account to show that the ticket was purchased. When I checked my Nordea account, it shows that the ticket was purchased from Fasanvej but the date when they will charge me is May 2nd (although today is May 1st) but the day I bought it was April 29th. However I am sure this is the ticket. I would like to appeal it as I always buy my tickets and never cheated on the metro.

The reason why I am appealing the decision is because the ticket agent actually told me to appeal the ticket because she believed me, and it is the truth. I even attached a copy of my Nordea account with the deduction of the ticket that I purchased on the machine. However, they still made a negative ruling against me. Even with the ticket agent telling me to appeal the ticket I still lose and I have spent the entire time in Denmark past 5 years always paying for every ticket. I just feel very much let down by your system, that an honest citizen cannot appeal the ticket and get a fair ruling even though I show you that I have paid the ticket. Furthermore, I am an Assistant Professor at CBS. I follow all the rules, and get punished by your system. You should try and punish those ppl who actually try to evade the metro instead of those who make an honest mistake. ”

### **Indklagede anfører følgende:**

“ First of all we would like to apologize for your late answer regarding this case.

Please find enclosed our comments and corresponding regarding the above mentioned complaint.

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](http://www.m.dk) as well as on our information boards which are placed at every station. The information wall contain travel information in both English and Danish.

Our Metro staff is trained to issue fare evasion tickets to all passengers without a valid ticket. They do not distinguish between an intentional or unintentional mistake. In cases where the passenger tries to explain the reason to why he or she cannot present a valid ticket, our staff is instructed to inform the passenger to contact Metro Customer Service in case he or she do not agree to the issued fare evasion ticket.

As a ticket is not personalized we do not accept subsequently presentation, nor do we accept bank statements as proof of purchase.

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 this case it is undeniable that the complainant did not have a valid ticket to present, as she writes herself, and this is why we find the fare evasion ticket correctly issued and maintain our claim of DKK 750,-. "

**Hertil har klageren anført at:**

"But let me be perfectly honest and clear. The metro officer who gave me the ticket refused to even return with me a few short stops to check if the ticket I bought was inside the machine. She just told me to appeal to you directly with my account details showing I bought and I followed HER instructions.

Although I followed the Danish metro officer's exact instructions, it is disappointing for the regulations to be against me. I maintain my objection to your ticket. Please let me know your decision within the time frame in two weeks. "

**Til dette har indklagede svaret at:**

"

In response to the complainants earlier mail, we have asked the steward about her handling in such cases and she has replied, that she never tells a customer to appeal, she tells them that if they do not agree to or do not understand the fare evasion ticket, the customer must contact Metro Customer Service, as there is nothing she can do. In cases where a customer is meet without a valid ticket she as a steward is instructed to issue a fare evasion ticket.

As she does not have any education regarding how a case is handled in Customer Service, she does not know if complaining will change anything. "

**Klageren har afslutningsvist anført at:**

"I am not sure if this is a reasonable excuse because she clearly told me to send all my details including bank information to you and she refused to return 3 stations before to check that if my ticket was inside the machine which I can be sure it was. So I am not sure if this is a good explanation."

På ankenævnets vegne



Tine Vuust  
Nævnformand