

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2016-0098
- Klagerne:** XX
Holland
- Indklagede:** Metroselskabet I/S v/Metro Service A/S
CVRnummer: 21 26 38 34
- Klagen vedrører:** 3 kontrolafgifter på 750 kr. og 1 kontrolafgift på 375 kr., i alt 2.625 kr., for udløbne billetter.
- Parternes krav:** Klagerne ønsker kontrolafgifterne annulleret
Indklagede fastholder disse
- 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 13. september 2016 truffet følgende

AFGØRELSE:

Metroselskabet I/S v/Metro Service A/S er berettiget til at opretholde kravet om klagerens og dennes families betaling af 3 kontrolafgifter á 750 kr. samt 1 kontrolafgift á 375 kr., i alt 2.625 kr.

Klageren og dennes familie skal betale beløbet til Metroselskabet I/S v/Metro Service A/S, som sender et girokort til dem.

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

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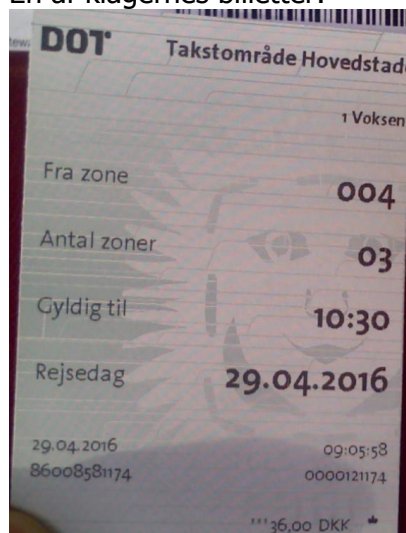
Hver af parterne kan anlægge sag ved domstolene om de forhold, som klagen har vedrørt.

Klageren henvises til at søge yderligere oplysning om eventuel bistand i forbindelse med sagsanlæg på www.domstol.dk, www.advokatsamfundet.dk og /eller eget forsikringssselskab om eventuel forsikringsretshjælp.

SAGENS OMSTÆNDIGHEDER:

Klagerne, som er hollændere, rejste den 29. april 2016 på ferie til København. Da de ankom til Københavns Lufthavn, købte de med hjælp fra en dansk dame billetter til metroen. Klagerne har oplyst, at de troede, at billetterne var gyldige hele dagen, hvorfor de senere på dagen rejste med metroen tilbage til hotellet på de samme billetter.

En af klagerens billetter:



Billettens udseende viser, at den er udstedt i en DSB-billetautomat. I disse automater kan kunden ikke gennemføre købet af billetten uden først at være præsenteret for et skærbillede, hvoraf billettens gyldighedslængde er anført afhængig af antal zoner.

Efter metroen havde forladt Amager Strand st., var der kontrol af klagerens rejsehjemmel, hvor de hver blev pålagt en kontrolafgift, henholdsvis 3 på 750 kr. og en enkelt børnekontrolafgift på 350 kr. for udløbet rejsehjemmel. Deres billetter havde alle gyldighed til klokken 10:30. Kontrolafgifterne blev alle pålagt i tidsrummet mellem 16:52-17:00.

Den ene klager anmodede den 2. maj 2016 Metro Service om annullering af de 4 kontrolafgifter og anførte til støtte herfor følgende:

"Dear Mme/Sir, early 29th April I flew to Kphagen with my family. [...] First time/first day to visit Denmark. At airport we got advice from a local Danish woman how to use the metro and bought 4 tickets thinking it was a ticket for the whole day. In the afternoon the metro kontrollers told us the tickets were not valid and fined us. We were shocked because we thought we had the right tickets! We apologize and ask you to withdraw all 4 fines."

Metro Service fastholdt den 6. maj 2016 kontrolafgifterne og anførte følgende:

"Thank you for your inquiry."

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, before entering the metro. Furthermore, you must be able to show the ticket or card in case of a ticket inspection. Information regarding tickets, validity as well as the zone system is available in English at all stations: Call points can be found on all of our ticket vending machines, and on our stations here is also yellow call point several places. These call points (the one on the ticket vending machine and the yellow ones on the station) 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. This operator can, in case he or she cannot help over the call point, call a steward to the station for help and/or guidance. Considering the above, you will be charged the full amount of the fine, which we request that you pay as soon as possible and no later than 3 weeks from today."

ANKENÆVNETS BEGRUNDELSE:

Indledningsvist bemærker ankenævnet, at billetens udseende viser, at den er udstedt i en DSB-billetautomat og således ikke i en Metro-automat. Klageren har derfor ikke fået præsenteret det skærbillede, som Metro Service henviser til i sine svar til ankenævnet.

Ved køb af billet i DSB-automater kan kunden ikke gennemføre købet uden først at blive præsenteret for et skærbillede, hvoraf billetters gyldighedslængde er anført afhængig af antal zoner.

Man får valget mellem at købe en "Dayticket" og en "Ticket", og klageren valgte det sidste.

En 3-zoners billet er gyldig i 75 minutter fra udstedelsen. På billetterne stod på dansk "gyldig til **10:30**", og købstidspunktet fremgik endvidere.

Ved kontrol i metroen den 29. april 2016 omkring klokken 17:00 foreviste klagerne 4 billetter til 3-zoner, som var købt ca. klokken 9:15 samme morgen.

Det er ankenævnets opfattelse, at klagerne ikke med rette kunne tro, at de kunne rejse en hel dag på billetten, når de havde valgt "Ticket" fremfor "Dayticket", eller at de uden at have undersøgt dette nærmere, kunne gå ud fra, at reglerne om billetters gyldighed i Holland fandt umiddelbar anvendelse i den kollektive trafik i Danmark.

Selv om klageren og dennes familie måtte have fået hjælp af en lokal person til køb af billetterne, er de selv ansvarlige for at have gyldige billetter.

Kontrolafgifterne blev derfor udstedt med rette.

Det bemærkes, at pligten til at betale kontrolafgift ikke er betinget af, om passageren bevidst har forsøgt at unddrage sig fuld betaling, da dette er et område med oplagt mulighed for omgåelse af reglerne om gyldig rejsehjemmel.

På den baggrund finder ankenævnet, at der ikke har foreligget sådanne særlige omstændigheder, at klagerne skal fritages for kontrolafgifterne.

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:

Klagerne anfører at:

"As a family we travelled on Friday morning April 29th 2016 to Copenhagen. It was a tourist trip and our first time we visited Denmark. On the first day of arrival at the airport in the early we bought a ticket for the whole family. We asked a friendly local Danish woman for assistance how it worked and she helped us with the ticket of which we thought a ticket for the whole day. However, on our way back to the hotel in the metro we had to show our tickets and the man of the Kontrolle told us that the tickets were not for the whole day but only for a certain timeframe in the morning. Obviously, we were not aware of that fact. We wanted to rectify for the mistake and asked for a new ticket but this was not possible! We immediately got a fine and not 1 fine but every family member got fined which is a huge amount of money.

We do apologize for the mistake we have made but want to file a complaint for the 4 fines given to us in view of the following arguments:

- 1st time visit to Denmark as a country and also 1st time use of the metro system in Denmark
- It is not fair to expect tourists to be aware of all customs and habits on the first day.
- It is not uncommon to provide room to make up for the mistake and enable people to rectify by letting them buy the right ticket on the spot (this was not possible in our case)
- The tickets were bought and paid collectively for all 4 family members (one amount has been written off) whereas the fines are given per person adding up to an enormous amount of money of DK 2625,-
- The total fine for our family is disproportional related to the mistake made and the circumstances under which the mistake has taken place."

Indklagede anfører 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 and DKK 375,- for children up to 16 years. 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. 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 passengers contact our Metro staff either in person or via call points on the station or in the Metro trains.

Call points can be found on all of our ticket vending machines, as well as yellow call points 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 complainants are met by two stewards inspecting tickets on the 29th of April 2016 at app. 16:55. The complainants presents tickets all purchased in the morning around 09:00 valid until 10:30. As the complainants are not able to present valid tickets a fare evasion ticket is issued to each of them, according to the travel regulations.

The complainants writes that they were first time tourists in Denmark, that they expect room for mistakes and that they find it unfair that each of them got a fine.

The complainants bought their tickets at the airport. Since the airport is by nature a place with many tourists there has been made an extra effort, using signs and information boards, to inform about how the ticket system works in Copenhagen and what to do, to purchase correct and valid tickets and what can occur if passengers are not in possession of valid tickets. In addition to the expanded signage, the airport metro station are also one of the stations that always are manned with metro steward staff. And besides metros own staff there is also a large manned ticket sale where i.e. tourists can seek information. See below:



These are photos of the information boards at the airport metro station and of the tickets machines:



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

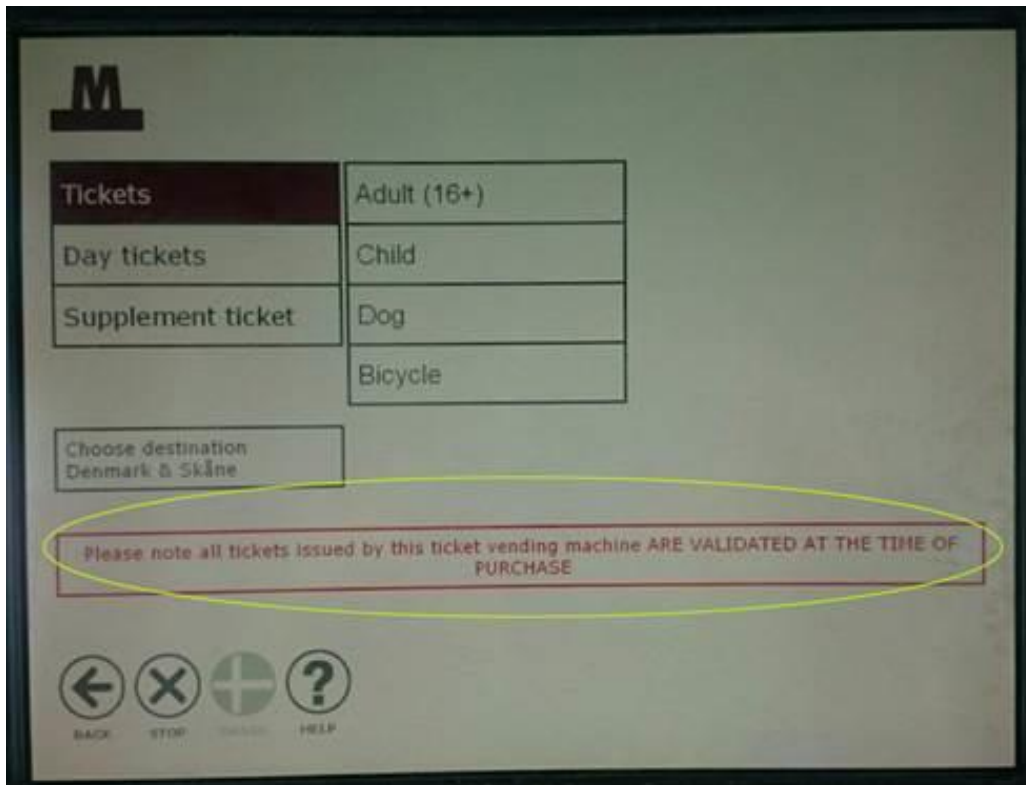
Do you use season card, then the card must cover the zones (marked with white) that you are bypassing or travelling in.

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.

Tourist can choose 'English language' at the ticket machine. When doing so the entire purchase is guided in English and the display clearly informs that any ticket bought is validated by the time of purchase.



We are sorry if the complainants feel unfairly treated, but no distinction is made, all are traveling on the same terms. There is thus no special rules for senior citizens, students, children, tourists, disabled or any other interest groups. The price of the fare evasion tickets are fixed; currently DKK 750 for adults and DKK 375 for children up to 16 years. There are no reduction for students, senior citizens, people travelling together or the like.

Even though we understand that everything might work differently in Denmark compared to what guest may be used to from their home land, passengers should do an effort in familiarizing themselves with a transport system, when coming to a foreign country.

Considering the above, we maintain our claim on the fare evasion ticket of DKK 750,- kroner for each of the adults and DKK 375,- for the child, a total amount of DKK 2.625,- If the complainants are not able to pay the fines in full, we can arrange an instalment plan."

Hertil har klagerne anført følgende:

"We still firmly underline the arguments written by us regarding the fines as given by the Metro service of Denmark. In Holland we have no record of any trespassing of public transport or otherwise which underlines our handling in good faith in Denmark. Also taking into account:

- our first time visit to Denmark ever;
- not being aware of all the customs and habits related to public transport in Denmark;
- the circumstances in which my husband has bought the tickets (after having travelled in the night in Holland to catch the flight and therefor not as clearheaded at the moment of the purches and also acting on the advice of a local Danish woman who he asked for help in the action of the purchase);

- the lack of sufficient communication by Metro service for first time travellers especially regarding the consequences, e.g. the extremely high fines, if tickets are not adequate. all underpin our arguments that the fines given to us as one family are disproportionate and unfair given the overall situation.

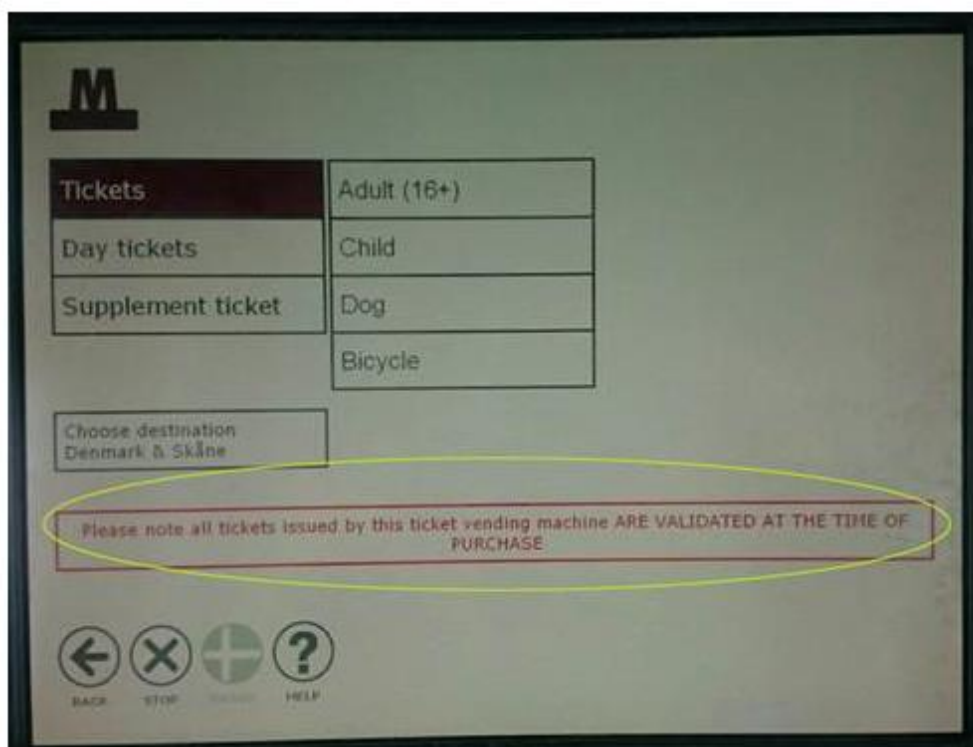
Added to that the Kontrolleur of the Metro service who gave us the fines that day assured us that we didn't have to worry as his experience was that the Metro service in this particular case would look at the overall circumstances and therefor most likely was to waive the fines. In view of this, we feel extremely disappointed about the reaction from Metro service so far."

Hertil har indklagede anført følgende:

"We have noted the complainant's recent remarks, but does not believe that there is provided any new information.

The complainants started their metro travel at the airport where we, due to the many foreign visitors, have made extra effort to inform, how to buy tickets, validity, fare zones etc. in both English and Danish language on information boards and by offering yellow call points, where passengers can get help if in any doubt. In addition to the large manned ticket sale, there are always Metro staff present at the airport station.

When purchasing tickets at the automat the customer can read a warning in red, telling that the tickets are validated at the time of purchase.



We have no knowledge of how the ticket rules for public transport in Holland works, but in our opinion one cannot assume the rules of the country you are visiting are identical to those you know from home.

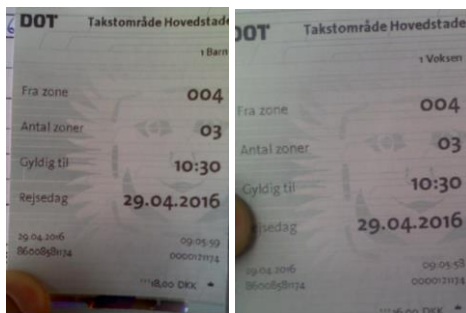
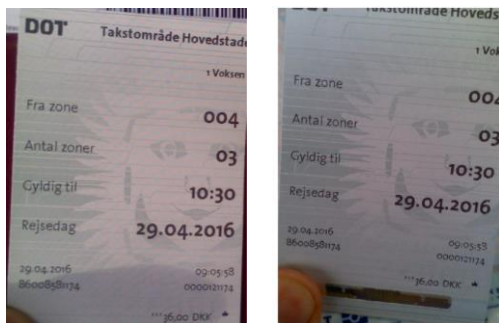
We are sorry that the complainants were tired, but we do not think that being tired can override the complainant's responsibility to ensure valid tickets.

We also regret that customers think that fines are extremely high. It is not a sum Metro decide, but an amount that the transport companies decide in consultation with the authorities.

We do not distinguish between an intentional or unintentional mistake, but relate exclusively to the facts. Facts in this case is that the complainants did not have valid tickets when they were checked."

RELEVANTE BILAG:

De ved kontrollen foreviste billetter:



På ankenævnets vegne

Tine Vuust
Nævnetsformand