

## AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2016-0147
- Klageren:** XX  
Sverige
- Indklagede:** Metroselskabet I/S v/Metro Service A/S  
**CVRnummer:** 21 26 38 34
- Klagen vedrører:** Kontrolafgift på 750 kr. idet kontrolafgift ikke var gyldig billet til ny rejse.
- Parternes krav:** Klageren ønsker kontrolafgiften annulleret  
Indklagede fastholder denne
- Ankenævnets sammensætning:** 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 6. december 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.

- 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](http://www.domstol.dk), [www.advokatsamfundet.dk](http://www.advokatsamfundet.dk) og /eller eget forsikringssselskab om eventuel forsikringsretshjælp.

## SAGENS OMSTÆNDIGHEDER:

Klageren, som er engelsktalende, rejste den 29. april 2016 med metroen fra Kongens Nytorv st. Efter metroen havde forlagt Kongens Nytorv st., var der kontrol af klagerens rejsehjemmel, og da han ikke kunne fremvise en billet, blev han klokken 23:43 pålagt en kontrolafgift på 750 kr. Stewarden har på den elektroniske kontrolafgift skrevet:

"Pax var beruset, vil ikke samarbejde. Hans ven fik ham ned efter et stykke tid"

Metroen var derfor kommet til Vestamager st., som er endestationen, da stewarden fandt ud af, at klageren var svensker og skulle til Malmø. Herefter forklarede stewarden klageren, at han skulle tage metroen tilbage fra Vestamager og stige af på Ørestad st. og derfra tage toget til Malmø. Kontrolafgiften blev derfor udstedt til Ørestad st.



Der er uoverensstemmelse mellem stewardens og klagerens oplysninger. Således har stewarden oplyst, at han steg af metroen på Vestamager st. og tog en anden metro tilbage mod centrum, hvor han skiftede på Christianshavn st. Her mødte han igen klageren i metroen mod Lufthavnen st. Klageren foreviste kontrolafgiften som billet, men da denne ikke var gyldig rejsehjemmel til denne rejse, blev han den 30. april kl. 00:12 pålagt en ny kontrolafgift på 750 kr. Klageren nægtede at modtage denne afgift.

Stewarden har på den elektroniske kontrolafgift skrevet:

"jeg møder pax efterfølgende på vej til cph. Han havde kun den afgift som jeg skrev tidligere. Pax vil ikke acceptere afg. jeg skriver en mail til ks for at forklare."

Stewarden indberettede den 30. april 2016 klokken 00:35 situationen til Metro Service.

Klageren har derimod gjort gældende, at han tog metroen fra Kongens Nytorv st. direkte til lufthavnen. Han fik den første kontrolafgift som beskrevet, men genkender ikke det resterende forløb. Ifølge klageren gjaldt hans kontrolafgift til lufthavnen.

Klageren betalte den første kontrolafgift men ikke nummer to. Metro Service sendte derfor en betalingspåmindelse med det rykkergebyr på 100 kr.

Klageren anmodede på den baggrund den 17. juni 2016 Metro Service om annullering af kontrolafgiften og rykkergebyret og anførte til støtte herfor følgende:

" Hello, I have payed my fee (see doc attached) for my travel with the Metro from the station: Kongens nytorv to Kastrup luftan. If you sending me a Be- talingspåmindelse for a second fee the same controller give me the same day( 2 fees in 10 minutes ), fee that I never accepted from him I will refuse to pay it. I have a witness, Mr [yy] that can testify that the controller new that I was living in Malmö and that I was going to Kastrup Luftan. Please let me know it you need more informatio"

Metro Service fastholdt den 22. juni 2016 kontrolafgiften med henvisning til at den første kontrol- afgift kun var gyldig rejsehjemmel til Ørestad st., og at han derfor ikke havde gyldig rejsehjemmel, da han blev pålagt sin anden kontrolafgift. De frafaldt rykkergebyret, fordi klageren ikke havde villet modtage kontrolafgiften og derfor muligvis ikke var bekendt med, at han var blevet pålagt en kontrolafgift.

#### **ANKENÆVNETS BEGRUNDELSE:**

Parterne er ikke enige om hændelsesforløbet.

Klageren har afgivet skiftende forklaringer og har senest bestridt at have mødt stewarden på Chri- stianshavn st., idet han gør gældende at have rejst direkte fra Kgs. Nytorv st. mod Lufthavnen, hvor han mødte stewarden ved Femøren st. og her blev pålagt en kontrolafgift, og omkring kl. 00:00 tog toget fra Lufthavnen til Malmø. Denne forklaring begrundet ikke, hvordan han ved sit møde med stewarden kunne forevise en kontrolafgift med gyldighed til Ørestad st.

Stewarden, der har været grundig og konsistent i sin beskrivelse af hændelsesforløbet, har forkla- ret, at han i overensstemmelse med klagerens oplysning om at skulle til Malmø udstedte den før- ste kontrolafgift fra Vestamager st. til Ørestad st., men at han senere mødte klageren i metroen på vej til lufthavnen.

Efter en samlet bedømmelse af sagens faktiske omstændigheder og parternes oplysninger lægger ankenævnet stewardens oplysninger til grund for afgørelsen.

Klageren kunne herefter ved kontrollen i metroen den 30. april 2016 fra Christianshavns st. mod Lufthavnen st. ikke forevise gyldig rejsehjemmel, da han foreviste den tidligere pålagte kontrolaf- gift, som kun var gyldig rejsehjemmel mellem Nørreport st. og Ørestad st., hvorfra klageren skulle skifte til tog mod Malmø. Kontrolafgiften blev derfor pålagt med rette. Det bemærkes, at kontrol- afgiften er rejsehjemmel til én uafbrudt rejse til den station på strækningen, som kunden oplyser, og kun med det selskab der har udstedt afgiften.

Det bemærkes, at 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 om- stændigheder, 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.

Kontrolafgiften udgør i ovennævnte tilfælde rejsehjemmel til en uafbrudt rejse til den station på strækningen, som kunden oplyser, og kun med det selskab der har udstedt afgiften. I busser udgør kontrolafgiften rejsehjemmel til bussens endestation.

## PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

### Klageren anfører følgende:

"I got 2 fees to pay for 1 mistake I made.

I was in the Metro the 29-04-2016 from Kongens Nytorv To Lufthavnen. (8 Metro stations in total) I have paid my fee of 750 DKK because I forgot to pay my ticket. Fines xxx issued 29-04-2016 at 11:25 pm

-The second ticket, fine xxx 30-04-2016 at 00:12 I don't understand It.

I went from Kongens Nytorv to Lufthavnen directly with a change of Metro (with no waiting time I had to run to catch it), I never went to Ørestad and I did not meet the steward on Christianshavn station like he is saying simply because I never return to Christianshavn station but we meet in the Metro between Femøren and Lufthavnen.

During my first control, the Stewart was told that I was going to Lufthavnen and then to Malmö. The Stewart never give us the instruction to go to Ørestad (He had no reason for that knowing that I was going to Lufthavnen )I have a witness that will testify.

You can look at all the videos cameras in the Metro, you will never see me at Ørestad station and Christianshavn station in company or not of the Stewart at 00:12, but you will see me at Lufthavnen station on my way to the airport to get my train to Malmö around 00:00

All this does not make sense to me"

### Indklagede anfører følgende:

"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](http://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 was met 2 times the same evening/night by a steward inspecting tickets on the 29th and the 30th of April 2016. The first fine (xxx) was given between DR Byen station and Vestamager station at 23:46 and the second fine (xxx) was issued between Christianshavn station and Lufthavnen Station at 00:12.

At the first inspection the complainant presented an expired ticket. As the complainant was not able to present a valid ticket, a fare evasion ticket was issued.

When a steward issues a fine the passenger is asked for the destination, and the destination is written on the fine as the fine is valid as a ticket for a single, uninterrupted, travel to the named destination.

The first fine was issued in the train heading towards Vestamager (terminus). The complainant told the steward that he was going to Malmø where he lives. It is not possible to get to Malmø using that metro line, so the steward explained to the complainant and his companion that he (the steward) would write 'Ørestad' on the fine and that the complainant and his friend should get off at Ørestad station, buy a ticket there and change to the train to Sweden.

This situation was witnessed by a metro colleague who was not in uniform, but who were in the train because she lives in the area. The colleague can confirm that the complainant appeared to be intoxicated by alcohol, that he initially refused to identify himself, pretended he did not understand English, and he behaved very condescending and provocative. Only when his friend joined the conversation, he agreed to cooperate.

The steward got off at Vestamager station to wait for the next train, and the two men stayed in the train heading back towards Ørestad station.

26 minutes later the steward, when inspecting tickets on the metro train between Christianshavn station and Lufthavnen station, meets the complainant again. The complainant still had not purchased a valid ticket and just showed the previous fine to the steward. As the previous fine was just valid from Vestamager station til Ørestad station another fine was issued (00684416). The complainant refused in any way to cooperate and to receive the fine and he left the steward in anger.

Just 19 minutes after the second charge was completed, the steward unsolicited wrote a report to the customer service department. The report is attached as a pdf file.

It is true that Metro areas are under video surveillance. But Metro cannot simply browse through the recorded material. It is only the police who are allowed to review the material and then only if there have been incidents of police interest. So the complainant's request to review all video material on the evening in question cannot be accommodated.

There is no reason to believe that the steward were to issue a fine without cause. It is our contention that the complainant, by not having acquired a valid ticket for his onward journey after receiving the first fine, has placed himself in a situation where he had to accept a second fine.

The first fine (xxx) has been paid, but considering the above, we maintain our claim on the second fine (xxx) of 750,- kroner .”

### **Klageren har svaret:**

“A completely new story from your side on where I got my ticket and how it happened matching my comments...

The non-relevant and inconsistency of the testimony of the steward is more than obvious.

Why did it took you 4 months to find a witness?

Why would I trust the new story more than your first version?

A lot of incorrect facts on your new letter that I am not going to comment here.

I have a witness, it is words against words.

I am not changing one word about what happened. My witness told the Steward that I was going to Lufthavnen. The Steward never give us the instruction to go to Ørestad (He had no reason for that knowing that I was going to Lufthavnen). He give me a ticket that I should use to go to Lufthavnen with and that is what I did.”

### **Indklagede har svaret følgende:**

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

We do not understand what the complainant mean by us having delivered a new story, and we certainly do not understand what the complainant mean by it has taken us four months to find a witness.

As shown in the pdf-file in our initial response, the steward sent, on his own initiative, an email to the customer service department just about 20 minutes after the complainant had obtained his second charge, reporting the incident. And when the metro colleague who witnessed the incident, came to work on Monday morning, she told unsolicited about the experience, in fact, without knowing that the steward had already submitted reports.

Based on the above, we maintain our claim on the second fine (xxx) of DKK 750,-.”

### **Klager har svaret følgende:**

“We have noted the complainant's recent remarks, but does not believe that there has been provided any new information: [Correct, I have been clear from the beginning about what happened and have no reasons to come with more explanations.](#)

We do not understand what the complainant mean by us having delivered a new story: [Now I am really worried and questioning your capacity to handle this case. Not only that on his first explanation the Stewart was “making up” a new travel for me that night \(Orestad-Christianhavn\), with a new ticket fee given in Christianhavn metro station, travel that I never made, \(the first explanation I received by e-mail and the reason why I should pay the second fee\) but now the person in charge who's writing this rapport have obviously completely forgot about it, and take the next letter that I received by post the 21 August](#)

with the witness explanation (that match my travel) as the only one that been made! Irrelevant one's again. It is really starting to seems like it does not really matter what happen as long as I am asked to pay the second fee

and we certainly do not understand what the complainant mean by it has taken us four months to find a witness. How long did it took you to send this letter with this new version? (I received it the 21 August by post, the facts took place in April)

Why have you been waiting so long if you knew allready the next Monday, tree days after the facts, how I went to Malmö?

Why sending me the rapport of the Stewart around one month after the facts saying that I got back with the metro from Ørestad to Chrstianhavn and base on that, asking me to pay the fee if you had the information 3 days after the facts from the witness that match my version on how I got home?

As shown in the pdf-file in our initial response, the steward sent, on his own initiative, an email to the customer service department just about 20 minutes after the complainant had obtained his second charge, reporting the incident

What's the name of the station this time where I got the fee on this first rapport made by the Stewart 20 minutes after the facts? Because in your first letter I received sent around one month later it was at Christianshavn if you remember but at an another station in the second letter received in August....

And when the metro colleague who witnessed the incident, came to work on Monday morning, she told unsolicited about the experience, in fact, without knowing that the steward had already submitted reports.

Has I already said I have a witness that can testyfied that we said to the Stewart that I was going to Kastrup and then Malmö. He never told us to go to Ørestad

But I presum that you will again find goods explanations to my above comments.

750 DKK is not a lot of money, but it is a lot of money when you know you should not pay them. What disturb me most and make me very concern is the non-professional way the Metro's personal is handling this case, coming with irrelevant comments to justify the fee.

And not to notice how much time consuming both sides are forced to take on this matter. Based on the above, we maintain our claim on the second fine (xxx) of DKK 750,-."

**Til dette har indklaget svaret:**

"We have noted the complainant's recent remarks, but does not believe that there is provided any new information, so we have no further comments.

Instead we refer to our previously submitted responses of 3th August and 9th September 2016 explaining our reasoning for retaining both fare evasion tickets and also contains all relevant documents."

På ankenævnets vegne



Tine Vuust  
Nævnshoved