

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2016-0174
- Klageren:** XX og YY
USA
- Indklagede:** Metroselskabet I/S v/Metro Service A/S
CVRnummer: 21263438
- Klagen vedrører:** 2 kontrolafgifter på 750 kr. for udløbet rejsehjemmel.
- 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 sit møde den 7. marts 2017 truffet følgende:

AFGØRELSE

Metro Service skal fratage kontrolafgifterne men skal i det konkrete tilfælde ikke betale 10.000 kr. for tabt sag i ankenævnet, da der er tale om en praksisændring i forhold til afgørelsen 2015-0222.

Da klagerne har fået medhold tilbagebetales klagegebyret, jf. vedtægterne § 24, stk. 2.

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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:

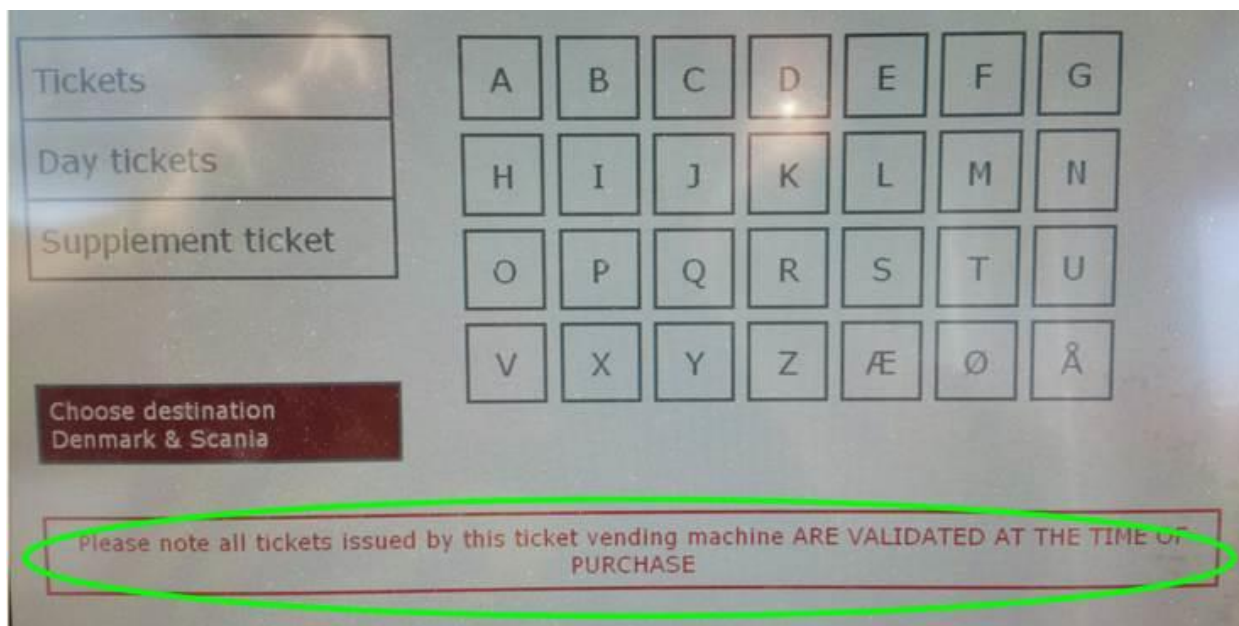
Klagerne, som er amerikanere, skulle overnatte i København den 1. juli 2016, inden de skulle videre med fly den 2. juli 2016 om morgenen. De havde derfor ved ankomst i Lufthavnen den 1. juli

2016 omkring kl. 22:15 købt to billetter hver; én til at rejse med metroen til hotellet og én til at rejse fra hotellet til lufthavnen næste morgen.

På billetterne stod anført på dansk, at de var gyldige 60 min. fra udstedelsestidspunktet. Billetterne så således ud:



Metro Service har under den efterfølgende nævnssag fremlagt følgende skærmdump fra købsflow'et på billetautomaten:



Ved kontrol i metroen den 2. juli 2016 kl. 06:45 blev klagerne pålagt hver en kontrolafgift på 750 kr. for udløbet rejsehjemmel, idet de foreviste de fire billetter.

Klagerne anmodede efterfølgende Metro Service om at annullere kontrolafgifterne med følgende begrundelse:

"We do not speak Danish. Because we were returning to the airport early the next morning, we bought 4 metro tickets at the time we left the airport. Two for the ride to the hotel, Two for our return ride the next morning. We left the airport at 22:15 -no one to ask. When we showed the four tickets to the conductor he told us they had expired. We were unaware they had a time limit because we did not speak Danish. We had made every effort to pay the correct fare by purchasing the four tickets."

Metro Service fastholdt kontrolafgifterne, idet de henviste til, at det var passagerens eget ansvar at sikre, at billetterne var gyldige til rejsen, og at oplysninger om billetters gyldighed og zonesystem kunne læses på stationerne, ligesom man kunne bruge opkaldspunkterne for vejledning.

ANKENÆVNETS BEGRUNDELSE:

Ved kontrol i metroen den 2. juli 2016 kunne klagerne ikke forevise gyldig rejsehjemmel, da de fire 2-zoners billetter var købt den 1. juli omkring kl. 22:15 og derfor var udløbet. En billet på 2 zoner er gyldig i 1 time.

Kontrolafgifterne blev derfor i selve kontrolsituationen pålagt med rette.

I det engelsksprogede købsforløb var der med rød tekst anført følgende passus:

"Please note all tickets issued by this ticket vending machine ARE VALIDATED AT THE TIME OF PURCHASE",

hvilket ikke i sig selv er en oplysning om billetternes tidsbegrænsede gyldighed.

Ankenævnet finder, at tidsbegrænsningen er en så væsentlig oplysning til kunder, at den burde fremgå under selve købsforløbet, som når kunder anvender DSB billetautomater, eller på selve billetten på engelsk.

Henset til de oplysninger, der i øvrigt gives, måtte klagerne have en forventning om, at de ved den røde advarselstekst havde fået de vigtigste oplysninger i forbindelse med selve købet; herunder oplysninger om billetens tidsbegrænsede gyldighed og en henvisning til informationstavlen for nærmere oplysning herom.

For dansksprogede kunder fremgår oplysningen om billetens tidsbegrænsede gyldighed på selve billetten.

Ankenævnet finder således, at Metro Service ikke ved købet gav klagerne tilstrækkelig information om billetternes gyldighed, og at det derfor var undskyldeligt, at klagerne, som anført af dem, regnede med, at de ved købet modtog billetter, som var gyldige fra udstedelsen; "validated at the time of purchase", men uden tidsbegrænsning.

Som følge af det anførte sammenholdt med, at ankenævnet modtager et stigende antal klager fra turister/ikke-dansktalende passagerer, som af den ene eller anden grund ikke har købt korrekt billet blandt andet grundet mangelfuld information på engelsk, finder ankenævnet, at Metro Service skal frafalde klagerens kontrolafgifter.

Ankenævnet er bevidst om, at der er tale om en ændring i praksis i forhold til afgørelsen 2015-0222, hvor en ikke-dansktalende spanier bosiddende i DK havde købt en billet dagen før afrejsen, og hvor nævnet fandt, at informationen på tavlerne på stationerne på engelsk var tilstrækkelig. Ankenævnet henstiller til Metro Service om at genoptage behandlingen af sagen 2015-0222, således at udfaldet stemmer overens med nærværende afgørelse.

Metro Service skal derfor ikke betale 10.000 kr. for tabt sag i ankenævnet i denne konkrete sag.

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:

As we advised in our initial complaint, filed on or about July 2, 2016, my wife and I arrived at Copenhagen Airport (CPH) at approximately 9:30PM (21:30) on July 1 having flown from San Francisco, CA by way of London over the previous 11 hours. After collecting our luggage, we proceeded to the Metro to go one stop to our hotel. Given our unfamiliarity with the Metro system, and because we were returning to the airport early the next morning for our flight to Iceland, we thought it wise to purchase four Metro tickets so that we could get onto the Metro immediately the next day without having to buy new tickets. As you can see from the attachment, we purchased four Fra Zone tickets at 24 KR each at 10:07PM (22:07). We fully expected to give two of the tickets to the conductor on the way to the hotel and the other two to the conductor on the return trip to the airport. Needless to say, we had no understanding that the tickets we purchased were time limited as subway/metro tickets in the USA are not similarly time based. Rather, they are currency based, that is, one simply adds money to one's ticket at the station at which one arrives if the money left on the ticket is insufficient to cover the train ride. When no conductor appeared on the train to the hotel, we kept the four tickets to present the next day if required.

Clearly we intended (and did) pay the full amount of the cost of Metro tickets to our hotel and back to the airport. As the attached documents show, we paid a total of 90KR for the four tickets. When we returned to the airport the next morning (July 2, 2016), a conductor asked us for our tickets. We showed him the four tickets and were advised that they had expired and that he would have to give us a citation. We explained to him that we made every effort to pay the appropriate fare and in no way had attempted to cheat the system. Moreover, we stated that it was late at night when we purchased the tickets and there was no one in authority available at the pay station or on the train to give us advice. The conductor told us he was sympathetic to our situation but was obligated to give us a citation. He said we could appeal the fine and advised us to inform the appeal department that we do not speak Danish. Based on his advice, I filed an appeal, which was denied on or about July 12.

In light of the fact that we paid the full price of the cost of Metro transportation to and from the airport, that the Metro system suffered no economic loss as a result of our actions, and that we made a good faith effort to comply with the requirements of the Metro and the spirit of the law, we would ask that, as a matter of equity, you forgive any fine that might otherwise be associated with our good faith actions

Indklagede anfører følgende:

“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. 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 were met by a steward inspecting tickets on the 2th of July 2016 at app. 06:45 between Femøren Station and Lufthavnen Station. The complainants presented tickets purchased the day before (on the 1th of July), explaining that they thought they could use them the following day, as this is a possibility in America. Passengers should do an effort in familiarizing themselves with a transport system, when coming to a foreign country. Assuming that rules from their home country also applies in Copenhagen, is in our opinion not sufficient. In this specific case, we note also that the complainant is a resident of Denmark.

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. The ticket sale are open every day from 06:00 – 23:00, see below:



If the customers choose to use the ticket machines, a warning text in red appears on the display, telling that the tickets they are about to buy, are validated at the time of purchase:

We are sorry if the complainants may have been tired after a long flight, but we do not think that being tired can override the complainant's responsibility to ensure valid tickets. We are delighted that the complainants enjoyed their stay in Copenhagen and spent a considerable revenue but does not believe that it is relevant for the specific case.

At Metro 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."

Til dette har klagerne svaret:

"

- 1. Contrary to the Metroservice's argument that mitigating circumstances and intention should not be considered in light of the Metro's strict liability approach to enforcement, the existence of appeal procedures including an Appeal Board explicitly recognizes the importance of taking such circumstances and intention into consideration when enforcing the fare evasion laws.**

The Metroservice argues that because the Copenhagen Metro is a self-service system it has adopted a *strict liability* approach to fare evasion enforcement. That is, regardless of the circumstances in which a potential violation occurred or the demonstrable intentions of the passenger, a Metro inspector must issue a fare evasion citation when presented with an expired ticket. According to the Metroservice statement, Metro inspectors are required "only [to] check the validity of the ticket" and "do not distinguish between an intentional and unintentional mistake." While we do not dispute that Metro inspectors may be strictly limited in the discretion they have to adjudicate violations, we disagree that this strict limitation extends throughout the entire Danish regulatory system. On the contrary, the system would not have established appeal procedures and an Appeal Board if the government and public did not believe that intention and mitigating circumstances should be considered for purposes of ensuring equitable application of the regulations. Indeed, when my wife and I explained our situation to the inspector issuing the citation, he advised us that, while personally sympathetic, he had no choice but to issue the citation. He also advised that we might obtain relief by appealing the citation and recommended that we inform the appeal department that we do not speak Danish. Thus, the inspector himself believed that mitigating circumstances and intentions could constitute a basis for relief at a higher level.

- 2. The Metroservice incorrectly asserts that we should have known our tickets were invalid (a) because of our resident status and (b) because the airport signage and ticket machines provide (in English) all the information we would need to understand the system.**

After chastising us as foreigners who had not made "an effort" to familiarize ourselves with the Danish transport system, the Metroservice asserts without any support "the complainant is a resident of Denmark." This assertion is entirely false. My wife and I were born in the United States and have lived there as U.S. citizens the entirety of our respective lives. We visited Copenhagen as tourists who had long wanted to experience the city.

Other than its strict liability position, the crux of the Metroservice’s argument for why the Board should uphold its fine is that there was adequate information available at the airport in English advising us that we needed valid tickets to use the Metro system. Specifically, they state that their signs and information boards at the airport expressly inform tourists that they must “purchase correct and valid tickets” to ride on the Metro and that failure to do so will have consequences. We do not dispute that such signs exist. Nor do we dispute that they advise tourists to have valid tickets. We do, however, believe this argument misses the point. We fully understood that we should have valid tickets. That is precisely why we purchased four full priced tickets, two for our ride to the hotel and two for our return to the airport. What we did not know and what neither the signs nor the information boards addressed in any way was that the tickets we were purchasing were time limited.

To bolster its argument that we should have known we had invalid tickets, the Metroservice references “a warning text” that appears in red on the ticket machine display. The text reads in pertinent part: “Please note all tickets issued by this ticket vending machine ARE VALIDATED AT THE TIME OF PURCHASE”. We understand this statement to mean exactly what it says: That at the time of our purchase we would receive fully “validated” tickets. What it does not say is that those tickets would be time limited. Nowhere in the referenced text is there language advising that the tickets would expire after a fixed period of time. Had there been such advice in English, we certainly would not have purchased two additional tickets knowing they would expire prior to the time we needed to use them.

3. In light of the circumstances under which we purchased our tickets, our demonstrable intention to possess valid tickets at the time of their use and the lack of any economic loss to the Metroservice as a result of our actions, we ask that the Appeal Board find in our favor and waive the DKK 1,500 fine sought by the Metroservice.

As we stated in our initial complaint, we arrived at the Copenhagen airport at 9:30PM after eleven hours of travel from San Francisco, California. We eventually made our way to the airport Metro station where we commenced to purchase tickets in order to go one stop on the Metro to our hotel. Because of our unfamiliarity with the Metro system and because we were returning to the airport early the next morning for a flight to Iceland, we purchased four tickets so that we could get onto the Metro immediately the next day without having to buy two new tickets. While it was clear to us that we needed to have valid tickets, we saw no information in English—on the signage, information boards or ticket machine display-- advising us that the tickets we were about to purchase were time based. I should note that there was no Metroservice representative at the station or on the train at the time of our journey to our hotel. The first we learned of the time-limited nature of the tickets was when we presented the tickets to the Metro inspector the next day.

It is demonstrably clear from the facts that we fully intended to possess and present valid tickets. An examination of the tickets and ticket receipt discloses that at 10:15PM (22.15) on July 1, 2016 we purchased four “Fra zone 4” tickets at 24 KR each by way of a credit card. Since we only needed two tickets to get from the airport to our hotel, the only reason we purchased two additional tickets at the same time was to ensure that we had valid tickets in our possession for our return trip the following morning. Had we wanted to evade the fare on the return trip, we certainly would not have purchased four tickets; rather, we simply would have purchased two tickets to the hotel and none on the way back.

After obtaining the tickets from the vending machine, we proceeded to the train, and, when no one collected two of them, I put all four in my pocket to present the next day if required. We had no reason to read the text on the tickets as it was in Danish, a language neither my wife nor I reads or speaks. Consistent with our intention to pay full fare for the round trip, we understood that we had purchased four valid tickets that had been validated as of the time of our purchase.

Our actions in no way deprived the Metro service of the economic benefit it would otherwise have received from our riding to our hotel and back to the airport. The cost of the ride to the hotel was 24KR each for my wife and me. The cost of the return trip was again 24KR each. As the ticket receipt shows, we paid a total of DKK 96, the full cost of the fares for both of us to our hotel and back to the airport. In short, we paid the same price for the four tickets as we would have paid had we bought the same tickets in two separate transactions a day apart. Thus, the Metro suffered no economic loss as a result of our actions.

Given that the Metro experienced no economic loss and that we made a good faith effort to comply with the spirit of the law by having what we believed were valid tickets in our possession, we again ask that as a matter of fairness and impartiality, the Appeal Board find in our favor and waive the DKK 1,500 fine sought by the Metro service.”

Hertil har Metro Service anført:

“First of all, we must stress that the complainant and his wife are *not* resident in Denmark. It is a mistake on our part, and we apologize sincerely.

At Metro we relate not to the passengers' intentions over the purchase of the ticket. We relate solely to whether passengers can show a valid ticket when a steward asks for it.

Thus, in this case it is likewise irrelevant whether Metro has suffered an economic loss. The case deals only with the fact that the complainant and his wife was not able to present valid tickets when they were asked for it.

As mentioned in our previous answer, it is very clearly indicated on the screen in English with red text that tickets purchased from the vending machine is valid from the date of purchase.

The complainant writes in his latest letter, that if he had known that tickets expired after a fixed period of time, he would have acted differently. The information is, however, available. All our stations have been set up information boards, which among other things informs for how long a period a ticket is valid in relation to the number of zones you select. See the photos below:

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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



På ankenævnets vegne



Tine Vuust
Nævnshoved