

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer:	2016-0191
Klageren:	XX England
Indklagede:	Metroselskabet I/S v/Metro Service A/S
CVRnummer:	21 26 38 34
Klagen vedrører:	Kontrolafgift på 750 kr. da klageren og hans ægtefælle hver kun havde købt en tillægsbillet på en zone
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 sit møde den 7. marts 2017 truffet følgende:

AFGØRELSE

Metroselskabet IS 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 IS 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.

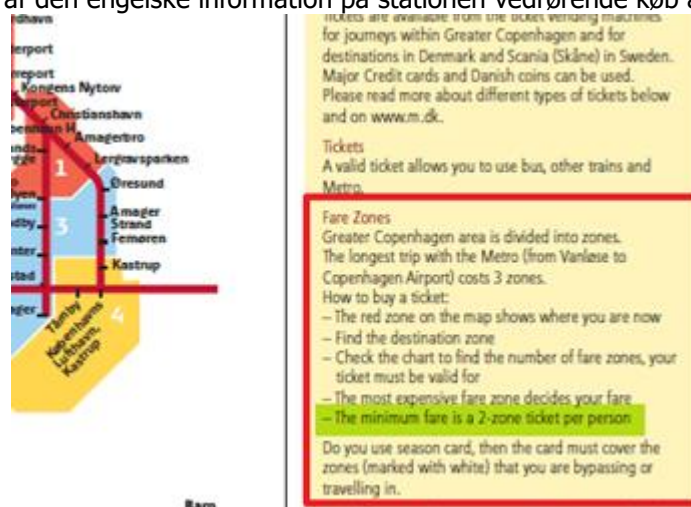
Klageren henvises til at søge yderligere oplysning om eventuel bistand i forbindelse med sagsanlæg på www.domstol.dk, www.advokatsamfundet.dk og /eller eget forsikringssselskab om eventuel forsikringsretshjælp.

SAGENS OMSTÆNDIGHEDER:

Klageren, hans ægtefælle og deres to børn, som er engelsktalende og var turister i København, rejste den 5. august 2016 med metroen fra Forum st. Ifølge klageren havde de ved billetautomaten på Forum st. af en anden passager fået oplyst, at de kunne nøjes med at købe to tillægsbilletter på 1 zone, da de kun skulle rejse i zone 1.

Efter at metroen havde forladt Forum st., var der kontrol af klagerens og hans ægtefælles rejsehjemmel, og da de kun kunne fremvise to tillægsbilletter på 1 zone, blev klageren klokken 9:27 pålagt en kontrolafgift på 750 kr., idet der altid skal købes billet til mindst to zoner. Stewarden lagde billetterne sammen, så ægtefællen undgik en kontrolafgift.

Et billede af den engelske information på stationen vedrørende køb af minimum 2 zoner:



Klageren anmodede den 5. august 2016 om annullering af kontrolafgiften og anførte til støtte herfor følgende:

“
Hello. I was going this morning from Forum to Norrebro (to visit Rosenberg Slot) both in zone 1, and was told at the machine by someone that a 1 zone ticket was enough, and this is what I bought in good faith. Sorry about that. Actually yesterday I bought at 10h00 a 24h 4 zones City Pass, which was still valid when I was travelling between Forum and Norrebro today at 9h30 (please see attached, bought with same bank card). But I completely forgot about it. Best regards. [redacted]”

Metro Service fastholdt den 15. august 2016 kontrolafgiften med henvisning til selvbetjeningsprincippet, samt at det ikke havde betydning at klageren efterfølgende kunne fremvise, et på kontrolltidspunktet, gyldigt City Pass, da dette ikke er en personlig billet.

ANKENÆVNETS BEGRUNDELSE:

Klageren kunne ved kontrollen i metroen den 5. august 2016 ikke forvise gyldig rejsehjemmel, da to tillægsbilletter på 1 zone ikke er tilstrækkelig rejsehjemmel for 2 rejsende. Der skal altid købes

billet til mindst 2 zoner. Kontrolafgiften til klageren, efter at stewarden havde lagt billetterne sammen, hvorved ægtefællen undgik en kontrolafgift, blev hermed pålagt med rette.

Klagerens efterfølgende indsendelse af et upersonligt 24 timers City Pass kan efter ankenævnets faste praksis ikke føre til, at klageren ved kontrollen var i besiddelse af gyldig rejsehjemmel.

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, er det ankenævnets opfattelse, at ikke har foreligget sådanne særlig omstændigheder, at klageren skal fritages for kontrolafgiften.

Ankenævnet finder, at tavlen på perronen på engelsk tilstrækkeligt tydeligt informerer om kravet til at købe minimum 2 zoner. Ankenævnet bemærker dog, at det ville være hensigtsmæssigt, hvis informationen derudover også fremgår i selve købsflow'et på billetautomaten.

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 perronen 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 would like to appeal against a decision made by Copenhagen Metro related to a fare evasion ticket, which I contest.

On 5 August 2016 I was travelling in the morning with my wife and our two children from Forum to Norreport to visit Rosenborg Slot.

At the Forum ticket machine I was told by someone who seemed to be willing to help, that a zone 1 ticket was enough. This made sense to me as we were travelling from a station in zone 1 to the next station, which was also in zone 1. Therefore I bought two zone 1 only tickets.

In the evening once back home in Fuglevangsvej, I checked my receipts from Copenhagen Metro, and found out that actually on 4 August I bought at 10h00 two 24h 4 zones City Passes (we went

to Den Bla Planet), which were still valid when we were travelling between Forum and Norreport on 5 August at 9h30.

Please note that when I was controlled just after boarding the train at Forum, as a proof of identification the Metro agent took the details and a photo of my Visa card ending in 9382 with my full name on it.

It is with this same card that I have paid for all tickets on Copenhagen Metro, and all these tickets/receipts show these same four last digits. Please let me know if you want me to send you any original ticket/receipt, etc.

All along I have acted in good faith. I apologised when I was first controlled. And indeed I am sorry about the confusion related to the zones, and also that I did not remember that I bought 24h City Passes, and therefore did not carry them with me at the time I was controlled on Copenhagen Metro. However, all along I have acted in good faith, and therefore I would like to appeal, and kindly request not to have to pay a fine to Copenhagen Metro.”

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 wall 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.

Beside the ticket vending machine there is a info wall **Trafikinformation / Traffic information**. On this info wall the information about zones are available in Danish as well as in English – please see a part of this information wall below:

Traffic information

ZONER OG BILLETTER / ZONES AND TICKETS



Billetkøb
Billetmaskinerne på alle metrostationerne sælger rejser til hovedstadsområdet, øvrige Danmark og Skåne. Maskinerne tager alle større betalingskort samt danske mønter. Læs om køb af forskellige billettyper nedenfor og på www.m.dk

Billetter
Alle billetter gælder til både bus, tog og Metro inden for billetens gyldighedsperiode.

Zoner
Hovedstadsområdet er delt op i zoner. De længste rejser i Metroen (fra Vanløse til Lufthavnen) koster 3 zoner takst. Sådan køber du billet:
- Rejsen begynder i den røde zone på kortet
- Find zonen for dit rejsemål
- Se antal zoner, du skal købe billet til
- Den dyreste zone bestemmer rejseens pris
- Du skal købe billet til mindst 2 zoner pr person

Rejser du på periodekort, skal kortet indeholde de zonenumre (anført med hvidt), som du ønsker at rejse igennem.

Gyldighed	Kontantbilletter	Klippekort
2 zoner	1 time	1 time
3 zoner	1 time 15 min	1 time
4 zoner	1 time 30 min	1 time 30 min
5 zoner	1 time 45 min	1 time 30 min
6 zoner	2 timer	1 time 30 min
7 zoner	2 timer 15 min	2 timer
8 zoner	2 timer 30 min	2 timer
Alle zoner	2 timer 45 min	2 timer

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.

It is of course very unlucky situation that the complainant – by a third person – had got some wrong information, but we find that as we cannot get this information confirmed by this third person and as we cannot be responsible for wrong information given by a person, who is not working for us, this do not change the outcome of this case.

Instead of relying on information given by a person who does not work for the metro, the complainant could have read about fare zone information on the board next to the ticket vending machine.

The complainant refers to his City passes which he has bought the day before.

A City Pass is - like a regular ticket - not personalized and is therefore only valid for the person who holds it and shows it in a ticket inspection situation.

All though the complainant can present a receipt of a purchase, this does not make it personalized, as the City Pass/ticket can be handed over to a third person - this is why we do not accept subsequent showing.

Finally we must point out that we do not take into consideration whether the lack of a valid ticket/enough zones 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.

Based on the above we find the fare evasion ticket correctly issued which is why we maintain our claim of DKK 750,-. "

Hertil har klageren anført at:

"As detailed in my previous correspondence, I had a valid ticket but not with me at the time I was controlled. All tickets were purchase with the same Visa card ending xxxx9382. The card number clearly appears on all tickets. Unless Metro suggests that my Visa card was stolen and/or fraudulently used, my 24h ticket was valid.

I was travelling with my wife and 2 young children, enjoying a very nice week of holiday in Copenhagen. I am of goodfaith and did not try to evade paying a fare in any way. I do not see why Metro is making such a fuss about it.

By the way when in Copenhagen, I had to complain twice about lifts to Metro not working. For many people like me with a buggy, a pram, or a bicycle this is a huge inconvenience. I would suggest Metro spending their time and energy making their underground system really accessible to all. "

Til dette har anklagede svaret at:

"We hereby sent our comments to the complainants latest mail.

As earlier mentioned all paper tickets (including City Passes) are not personalized and is therefore only valid for the person who shows it/them at the time of ticketing.

Unfortunately – as also mentioned in our previous mail – we do not take into consideration whether the lack of a valid ticket or lack of zones is due to a conscious or unconscious act.

Our decision stands and we sustain our claim of DKK 750.

Regarding the complainants comments about the Metro underground system we can inform, that malfunctions on the technique can occur but we do everything in our power to keep the operation of train, lifts and escalators as close to 100% as possible. "

På ankenævnets vegne



Tine Vuust
Nævnshoved