

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2016-0263
- Klageren:** xx og yy
Finland
- Indklagede:** Metroselskabet I/S v/Metro Service A/S
CVRnummer: 21 26 38 34
- Klagen vedrører:** To kontrolafgifter á 750 kr., i alt 1500 kr., da ægteparret ikke kunne finde en billetautomat.
- 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 truffet følgende:

AFGØRELSE

Metroselskabet I/S v/Metro Service A/S er berettiget til at opretholde kravet om betaling af begge kontrolafgifter på i alt 1500 kr.

Klagerne 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.

- 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, www.advokatsamfundet.dk og /eller eget forsikringssselskab om eventuel forsikringsretshjælp.

SAGENS OMSTÆNDIGHEDER:

Klagerne, som er bosiddende i Finland, var på ferie i Danmark og skulle den 5. februar 2016 rejse med metroen fra Nørreport st. til Lufthavnen st. På rejsen fra Kastrup Lufthavn mod centrum havde de ikke havde problemer med at finde en billetautomat, men på Nørreport st. ledte de forgæves efter en billetautomat eller oplysninger om køb af billetter, men da de ikke kunne finde dette, troede de, at det var muligt at købe billetter om bord på metroen.

De steg herefter på metroen, og da denne havde forladt Christianshavn st., var der kontrol af ægteparrets rejsehjemmel. Da de ikke kunne fremvise gyldig rejsehjemmel, blev de klokken 12:39 og 12:58 pålagt en kontrolafgift på 750 kr. hver. Stewarden har på den elektroniske kontrolafgift noteret:

“ingen billet, da pax ikke kunne finde billetmaskinen. Pax temmelig vred over afgift og vil bestemt klage. Pda. Gik IGEN ned ved foto af pas”

Klageren anmodede den 8. februar 2016 Metro Service om annullering af kontrolafgifterne og anførte til støtte herfor følgende:

“Me and my husband [redacted] had no tickets from Copenhagen centre to Kastrup flyghavn because as tourists in Cph we did not find ANY place to buy them from. We had bought tickets for the metro from Kastrup flyghavn to Cph when we arrived and it was easy to find the ticket automat. There are NO SIGNS WHAT SO EVER where to buy tickets when you walk from strøget to Nørreport subway station. No tickets automats in sight. IF THIS IS CPH TOURIST SERVICE AT ITS BEST YOU STILL HAVE MUCH TO DO!”

Metro Service fastholdt den 8. februar 2016 begge kontrolafgifter med henvisning til selvbetjeningsprincippet, samt at der fandtes information om, hvor der kunne købes billetter på stationen. Herudover henviste de til, at klagerne havde mulighed for at få hjælp, til køb af billetter ved brug af de gule opkaldspunkter.

ANKENÆVNETS BEGRUNDELSE:

Ægteparret kunne ikke forevise gyldig rejsehjemmel i kontrolsituationen, fordi de var steget om bord på metroen uden at have købt billet i den tro, at det var muligt at købe billetter om bord. Det har imidlertid aldrig været muligt at købe billet om bord på metroen, og de kunne ikke forevise billetter i kontrolsituationen. Kontrolafgifterne blev hermed pålagt med rette.

Hvis man går ned til perronen via trapperne, kommer man forbi billetautomater på vejen. Hvis man tager elevatoren ned, er der såvel i elevatoren som oppe på gadeniveau information på engelsk samt et piktogram om, at elevatoren ikke stopper ved billetautomaterne.

Metro Service har i sagen henvist til, at der på perronen var oplysninger på engelsk om, at man skal have gyldig billet. Imidlertid er informationen på engelsk anderledes end på dansk, og det er i den engelske tekst udeladt, at det er *inden påstigning*, at passageren skal have gyldig billet, således som det står anført i den danske tekst.

Klageren kunne i metroen hurtigt have konstateret, at billetter ikke kunne købes om bord, og de burde straks være steget af metroen ved det første stop, hvilket de undlod, idet de blev kontrolle-

ret efter yderligere et stop. Herefter, og da dette er et område med oplagt mulighed for omgåelse af reglerne om at betale for gyldig rejsehjemmel, finder ankenævnet, at der ikke har foreligget sådanne særlige omstændigheder, at klagerne skal fritages for kontrolafgiften.

Det bemærkes herved, at pligten til at betale kontrolafgift ikke er betinget af, om passageren bevidst har forsøgt at unddrage sig betaling for billetten.

Ankenævnet har i en tidligere sag (2014-0165) henstillet til Metro Service om at ændre formuleringen af den engelske tekst i afsnittet kontrolafgift på informationstavlerne, idet der ikke som i den danske tekst er anført:

"...det er dit ansvar inden påstigning at have en gyldig billet...",

men alene står:

"...it is your responsibility to have a valid ticket...", og dermed ikke, at denne skal være gyldig inden påstigning.

Da teksten ikke ses ændret, erindrer ankenævnet på ny derom, idet der ses et stigende antal klager fra ikke-dansktalende rejsende, som har behov for korrekt vejledning om billetsystemet.

Ankenævnet bemærker, at der ved nedgangen til Metroen fra Frederiksborggade ikke er nogen skiltning eller billetautomater, hvorfor der i det mindste bør opsættes skiltning om, hvor billetter kan anskaffes.

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:

"We have already delivered you complaints about this fine and our reasons for the complaint has not changed. See the previous complaints.

You are right in that point that we as passengers should have tickets when we use the metro services. That is fine with us and we had tickets for the journey from the airport in to Copenhagen town centre because we found were to buy the tickets. We also showed the tickets to the person who gave us the fine and explained to her as following.

WE WOULD HAVE BOUGHT THE TICKETS ALSO FOR THE JOURNEY FROM COPENHAGEN CENTRE TO THE AIRPORT IF WE WOULD HAVE FOUND ANY PLACE TO BUY THE TICKETS.

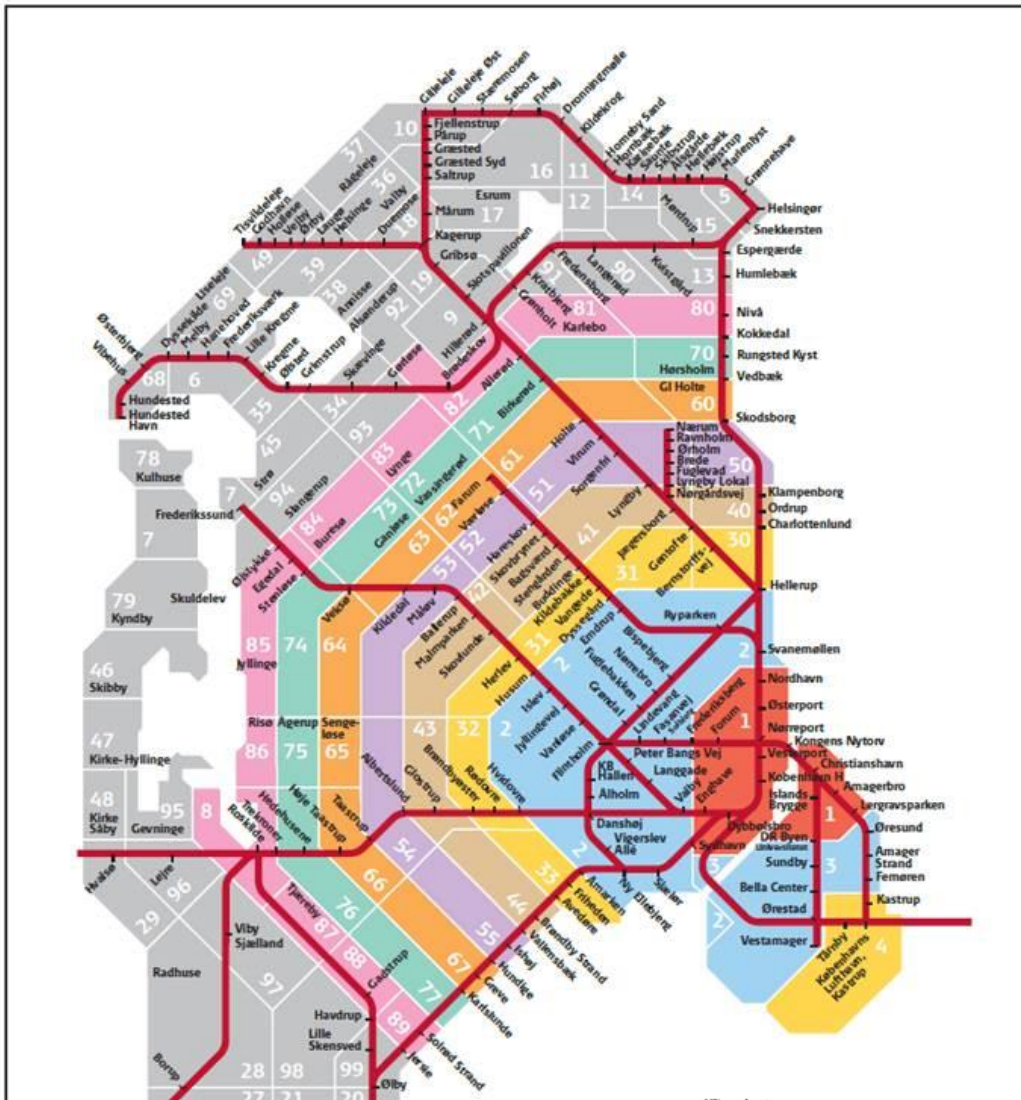
The passengers responsibility is to have tickets for the journey but it surely is the companys, that provides the service, responsibility to make it possible for a passenger to buy tickets for the journey even if the passenger doesn't use the transport by regular bases and know how and from where to buy the tickets. It should be possible to easily find a ticketcounter or machine before you board the transport where you can buy the tickets. As we earlier have explained do you this was not the case. We searched many times for ticket machines or signs where to buy the ticket but there was none at the platform or in the stairs leading down to the subway or in the neighbourhood. Thats why we thought that we can buy the tickets on board. We will not accept that we should be held responsible for the lack of ticketmachines or proper information of how to buy the tickets as tourists. "

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 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 at every level. The information wall contain travel information in both English and Danish.

The clip below is from the information board **Trafikinformation / Traffic information:**



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 zoners 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 rejsens 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

And on the same information board below the above:

Metroen kører alle dage og nætter
Dag: 2-6 minutter mellem togene.
Nat: 10-20 minutter mellem togene.
Længere rejsetid kan forekomme ved:
– omstigning mellem de to metrolinjer M1 og M2
– planlagte vedligeholdelsesarbejder
– driftsforstyrrelser
Eventuelle ændringer i driften vil fremgå af www.m.dk.

Kontrolafgift

Husk det er dit ansvar inden påstigning at have en gyldig billet eller kort til rejsen for både dig og dine eventuelle ledsagere.
Manglende billet eller kort (samt rejse i spærretiden for dem der rejser på pensionistkort eller med cykel) medfører pr. 1. januar 2013 en kontrolafgift på 750 DKK pr voksen, 375 DKK pr barn/hund og 100 DKK pr cykel og videre rejse i spærretiden er ikke tilladt.
Der henvises til www.m.dk samt rejsereglerne for gældende satser på kontrolafgifter og yderligere information.

Børn

Op til to børn under 12 år kan rejse gratis i Metroen, hvis de følges med en betalende voksen.

Rejser børn under 16 år alene med Metroen, skal de have en børnebillet.

Hunde

Din hund rejser på børnebillet. Dog rejser mindre hunde gratis, når de transporteres i en taske.

Cykler

Cykler må medbringes, når du har købt en cykelbillet, og når rejsen foretages uden for spærretiden – dvs alle hverdage kl. 7:00-9:00 og kl. 15:30-17:30.

I juni, juli og august må cyklen medtages på alle tidspunkter.

Rejsende med Rejsekort

Når Rejsekort benyttes i Metroen:

Check ind ved rejsens start.

Check ind er registreret på chippen i dit rejsekort, når kortlæseren kvitterer med et "ding" og et **OK** på skærmen.

Hvis du fjerner dit rejsekort for hurtigt fra **Det Blå Punkt**, registreres **Check ind** ikke. Kortlæseren kvitterer med et "dong" og meddelelsen **Fejl. Prøv igen**.

Check ind hver gang du skifter transportmiddel.

Check ud ved rejsens afslutning. Hold dit rejsekort hen på **Det Blå Punkt**, indtil skærmen viser rejsens pris og et **OK**. Først da har du checket rigtigt ud.

Hvis du ikke foretager et **Check ind** ved rejsens start eller ved skift, har du ikke gyldig rejsehjemmel, og du kan risikere en kontrolafgift iht. gældende rejseregler.
Glemmer du at foretage **Check ud**, mistes forudbetalingen.

The metro operates 24/7

During daytime: 2-6 minutes between train departures.
During night: 10-20 minutes between train departures.

Longer travel time might occur
– when transferring from M1 to M2
– due to planned maintenance work
– due to operational disruptions

Any changes will be announced on www.m.dk.

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.

Children

Up to two children under the age of 12 travel for free in the Metro, if accompanied by a paying adult. Children travelling alone and under the age of 16 must have a children's ticket.

Dogs

Your dog must have a children's ticket. Smaller dogs travel for free in the Metro, if carried in a bag.

Bicycle

You can take a bicycle with you when you have bought a bike ticket, and when you travel outside curfew for bikes - that is all weekdays between 7:00-9:00 am and between 15:30-17:30 pm. In June, July and August, however, you can take your bicycle with you at all times, as long as you have a valid ticket also for the bicycle.

Travel card

When using a travel card in the Metro:

– Make a **Check-in** at the start of the trip on **The Blue Point**. **Check-in** is registered on the chip in your travel card, when the card reader returns a "ding" and an **OK** on the card reader screen.

– If you remove your travel card too quickly from **The Blue Point**, the chip is not registering your **Check-in**, and you will hear a "dong" and the message **Error. Please try again**.

– Make a **Check-in** whenever you change mode of transport
– Make a **Check-out** at the end of the trip and wait for the screen to show the cost of the trip and an **OK**.

If you do not make a **Check-in** at the start of the trip or when changing mode of transport, you do not have a valid ticket, and you risk getting a fine in accordance with applicable travel regulations.

If you forget to make a **Check out**, you will lose the prepayment.

At the bottom of the information board following is written:

Kundeservice Customer service

Metro Service A/S (Metro)
T 7013 1615 / www.m.dk

DSB (other trains than Metro)
T 7013 1415 / www.dsb.dk

MOVIA (buses)
T 3613 1415 / www.moviatrafik.dk

Rejsekort
T 7011 3333 / www.rejsekort.dk

Kontakt

Hjælp til din rejse kan fås ved at benytte de gule opkaldssteder, som findes på perroner og i tog eller benytte infokapperne på billetautomaten. Yderligere information findes på hjemmesiden www.m.dk og i folderen "Rejseregler", som findes på stationerne.

Contact and further information

You can get additional assistance, by using the yellow dial locations that you find on both platforms and in the trains or you can use the info button on the ticket vending machine. Alternatively www.m.dk and the folder "Rejseregler" provide more information.

At the information board – **Metroinformation / Metro information** - following can be seen:



Henvendelser til Metroens kontrolrum kan ske fra opkaldsstedet – tryk **INFO**. Ved akut fare – tryk **ALARM**.

Inquiries to the Metro control room may be made from the call point by pressing **INFO**. In case of emergency, press **ALARM**.



Metrostationer og Metrotog er kameraovervågede af hensyn til de rejsendes sikkerhed og tryghed.

For passenger safety and security Metro stations and trains are under video surveillance.



Rejser med Metroen kræver gyldig billet eller kort. Billetter eller kort kan købes i automater på alle stationer. Billetkontrol kan ske både under rejsen, ved udstigning og på stationen efter endt rejse. Ved manglende billet udstedes kontrolafgift efter gældende regler.

Travelling on the Metro requires a valid ticket or travel card. Tickets and travel cards are available from ticket vending machines at the stations. Ticket control may be performed during the journey, when alighting and at the station after the journey has ended. Passengers boarding a train without a valid ticket will be liable to pay a penalty fare.

As mentioned in our first answer, call points can be found on all of our ticket vending machines, and on our stations 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. The yellow call points can be used for any information regarding the metro, question regarding tickets a.o.

In the complaint to the Board of Appeal the complainant has written "***We searched many times for ticket machines or signs where to buy the ticket but there was none at the platform or in the stairs leading down to the subway or in the neighbourhood.***"

The complainant do not mention how they got to the platform. In case they used one of the elevators, there is information before entering the elevator going directly from the street to the platform saying:



In case the other elevator had been used from the street to the platform this has several stops among others on the level, where the ticket vending machines are – the information below could be found just outside the entrance to the elevator:



Had the complainants used the stairs from the street on to the metro they would have passed the ticket vending machines on their way down.

As the complainants has stated that at their first trip with the metro "**from the airport to Copenhagen town centre**", they bought tickets at the station before entering the metro, they must have been aware that tickets was needed.

The complainants writes later in the complaint "**we thought that we can buy the tickets on board**".

We do not understand how the complainants thought they could buy tickets on board as the have already taken a trip with the metro, where they bought tickets before entering and further more saw no ticket machines or sales personnel in the metro.

And if this was the case, why would they look for a place to buy tickets at the station.

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 customers responsibility - before boarding the metro - to secure a ticket or valid card, which can be presented on demand.

Based on the above we find that the necessary information is available – that it is necessary as a passenger to secure a valid ticket before entering the metro, that tickets can be bought at the station and that in case help is needed the yellow call point can be used.

Due to the above we find the fare evasion ticket issued correctly and maintain our claim of 750 DKK each.

Finally we would like to draw the attention to earlier decisions made by the Board of Appeal in similar cases where a passenger could not present a valid ticket when asked for by the steward. In this cases the decisions have been made in favor of the respondent company. "

Hertil har klageren anført:

"Thank you for your mail even if it proves your total lack of understanding toward tourists and that they -- like we were - don't have the same experience or knowledge of your system as you have when they use your services for the first time in their lives. Seems to us that you demand that no one should ever never make any mistakes and should be punished as hard as possible because you have the possibility to do it.

Seems to us that you totally lack any humanitarian sympathy towards tourists.

You don't either seem to read our mails thoroughly or maybe you just don't want to understand our situation. We have already explained our situation many times and we don't have anything more to add to our defence. We had proved to you that we surely do understand that services cost - that's why we had bought tickets for our trip from the airport to the centre. We are not freeriders and we are in that age that we don't try to get any satisfaction or excitement from things like that. On that trip we also from the airport to the centre we noticed a ticket controller on the metro carrying some kind of device that looked similar to an transportable vending machine that the clerks have in Finland on **every** train and thought that there is the same possibility as in Finland. Or do you think that tourists think when they see that "Ooo, look at that! There is a clerk walking around on the metro with a device that you can't buy tickets from. It's just there to give expensive fines to tourists". Come on! I do hope you understood the irony in that sentence. I am very sorry to say that we don't appreciate neither Copenhagen or Denmark anymore after this. You have branded the slogan "Danmark är dejligt" but we think you should consider to change it to "Danmark är jävligt".

Do what you like, it feels like talking to a wall to get you to understand that we did not ride without tickets on purpose. Our intension was to have a smooth travel without any complications but since that was not the case the first time it would have been nice to come over to Copenhagen further on other times but let us forget that now. With that kind of behavior from your side toward guests that come to visit your town it is not a trip you want to do any more.

I still have a last proposal to you. Lets go viral with this case after we get your decision - whatever it is. Let's publish all of our communication and how the complaint system works. I think it would be very useful information for everyone who try to ride free on your metro. "

På ankenævnets vegne



Tine Vuust
Nævnnsforman