

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer:	2016-0020
Klageren:	XX på egne vegne og på vegne af kæresten YY Frankrig
Indklagede: CVRnummer:	Metroselskabet I/S v/Metro Service A/S 21263834
Klagen vedrører:	2 kontrolafgifter på hver 750 kr. for udløbet rejsehjemmel og manglen- de billet
Parternes krav:	Klageren 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 2. maj 2017 truffet følgende:

AFGØRELSE

Metro Service er berettiget til at opretholde kravet om betaling af kontrolafgifterne på 750 kr., i alt 1.500 kr.

Beløbet betales til Metro Service, som sender et girokort til klageren og dennes kæreste.

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

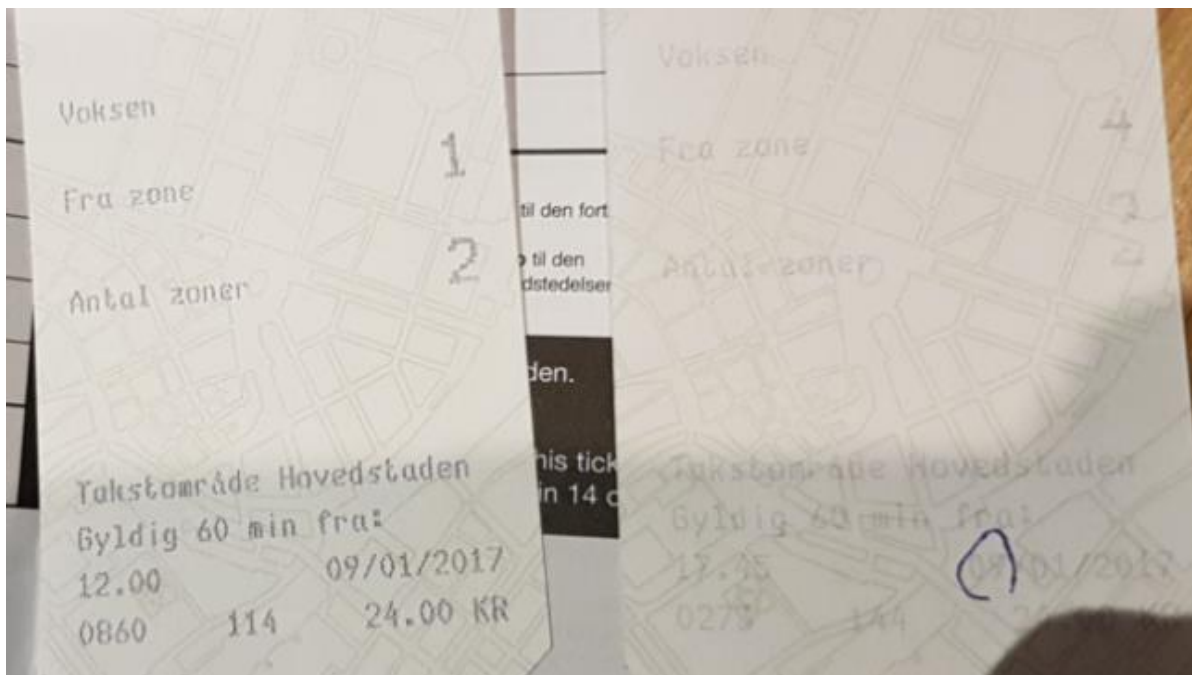
SAGENS OMSTÆNDIGHEDER:

Klageren og dennes kæreste, som begge er udenlandske studerende, var på weekend-ferie i København, hvor de rejste rundt med metroen. Den 10. januar 2017 skulle de med metroen til Lufthavnen for at nå deres fly. Ifølge klageren havde de forinden købt billetter til metroen og tog tilbage til værelset for at pakke. Imidlertid kom de til at forveksle de 2 forrige dages billetter og smed de nye billetter ud i stedet for de gamle. Ved kontrol i metroen efter Femøren st. blev de derfor kl. 17:48 pålagt hver en kontrolafgift på 750 kr. for hhv. manglende billet og for udløbet rejsehjemmel, idet de kun foreviste nedennævnte billet fra den 9. januar 2017 kl. 17:45 til 24 kr. gyldig i 2 zoner fra zone 04 (Kastrup og Lufthavnen).



Billede fra stewards PDA (håndholdte computer)

Samme aften den 10. januar 2017 anmodede klageren om annullering af kontrolafgifterne og anførte som ovenfor, samt at de ikke havde kvittering for betalingen, da automaten ikke virkede med deres betalingskort, hvorfor de betalte kontant. Selvom de trykkede på "English", blev billetterne trykt på dansk, som er et sprog, de ikke forstår. Endelig klagede han over kontrolafgifternes størrelse og vedlagde en billet mere fra den 9. januar 2017 kl. 12:00.



Metro Service fastholdt kontrolafgifterne den 16. januar 2017 med henvisning til selvbetjeningsprincippet, information på tavlerne om billetters gyldighed og at billetten skal kunne forevises ved inspektion.

ANKENÆVNETS BEGRUNDELSE:

Klageren og hans kæreste rejste den 10. januar 2017 med metroen, hvor de ved kontrol omkring kl. 17:45 ifølge stewardens foto foreviste én billet gyldig den 9. januar 2017 i 2 zoner fra zone 04 i 60 minutter fra kl. 17:45. Efter det af klageren oplyste var de i besiddelse af de to billetter som vist ovenfor.

Uanset om der ved kontrollen den 10. januar 2017 blev fremvist én eller begge billetter, var ingen af disse gyldige som rejsehjemmel, idet de var udløbet dagen før.

Herefter blev kontrolafgifterne for manglende rejsehjemmel pålagt med rette.

Selv om printet på den ene billet er utydeligt, er det dog muligt at se datoen 09/01/2017.

Det af klageren anførte om, at han ikke var opmærksom på at undersøge datoen på billetterne, fordi de havde travlt med at nå i lufthavnen, og at billetsystemet er anderledes i Lyon, hvor de er bosat, kan ikke føre til et andet resultat. Ej heller har det nogen betydning, at DSB i 2014 frafaldt en kontrolafgift udstedt til en udenlandsk studerende.

Ankenævnet bemærker, at det efter ankenævnets faste praksis ikke har betydning, om der fremlægges bankudskrift fra billetkøbet, idet billetter skal kunne forevises ved kontrollen.

Ankenævnet anbefaler Metro Service om i muligt omfang at etablere en mulighed for, at billetter udskrives på engelsk og ikke dansk, når kunden på billetautomaten vælger engelsk som sprog.

Det bemærkes, at pligten til at betale kontrolafgiften ikke er betinget af, om passageren har betalt for rejsen. Dette er et område med mulighed for omgåelse af rejsereglerne om at kunne forevise gyldige billetter, hvorfor ankenævnet ikke finder, at der er grundlag for at fravige reglerne om, at passageren selv bærer ansvaret for korrekt rejsehjemmel.

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:

“My complaint is regarding my girlfriend and I as we had the wrong tickets on the metro while heading to the airport. We had previously bought tickets with us instead as we didn't know which ones were which since they were all in Danish and not English. I am a Canadian international student and Emilia is a Finnish international student and we are both studying in Lyon, France. This was our first visit to Copenhagen and were very confused with the metro system as the one in Lyon is not at all the same. I came across this appeal from an international student from 2 years ago, who got exempt from paying his fine under the same circumstances that we have which can be used as precedent to appeal this matter. Seeing as this can be used as precedent I do not believe that 2 international students in a foreign country where we do not understand the local language should have to pay a fine and instead be exempt like this gentleman here as evidently, we were both confused of which tickets were which and didn't know which ones were valid. I will attach pictures of our student cards as proof for further evidence and I have already sent in pictures of the mistaken tickets we had on board with us at the time of the fine.

If that is the case and they have not reviewed our case we wish to proceed on with our appeal. We believe and hope the appeal board will be just and fair with two international students, who on their first visit to Denmark made a mistake and threw out our "valid" tickets. Seeing as it was my fault for doing this action, I am begging the appeal board to find it in their hearts to retract the fine assessed to my girlfriend and only hold up the fine on myself as I am the only one at fault here and not her for disposing of the wrong tickets. The Appeal Board must understand that this was a human error that happens to people like you and me

everyday and I will take full payment on my part even though I do not believe the fines are just. Due to the lack of information visible and marked for tourists and students travelling for the first time on the Copenhagen metro system, I do not believe the graphics provided prove that I easily saw them upon arrival in the metro. The reason I was not attentif to the dates on our tickets is due the fact we were in a rush to the airport to not miss our flight. As students already on a low budget we ask to please consider our case carefully as I may now have to cancel a trip in order to pay for this ridiculous fine.”

Klageren har videre henvist til, at DSB i 2014 frafaldt en kontrolafgift hos en udenlandsk studerende.

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.

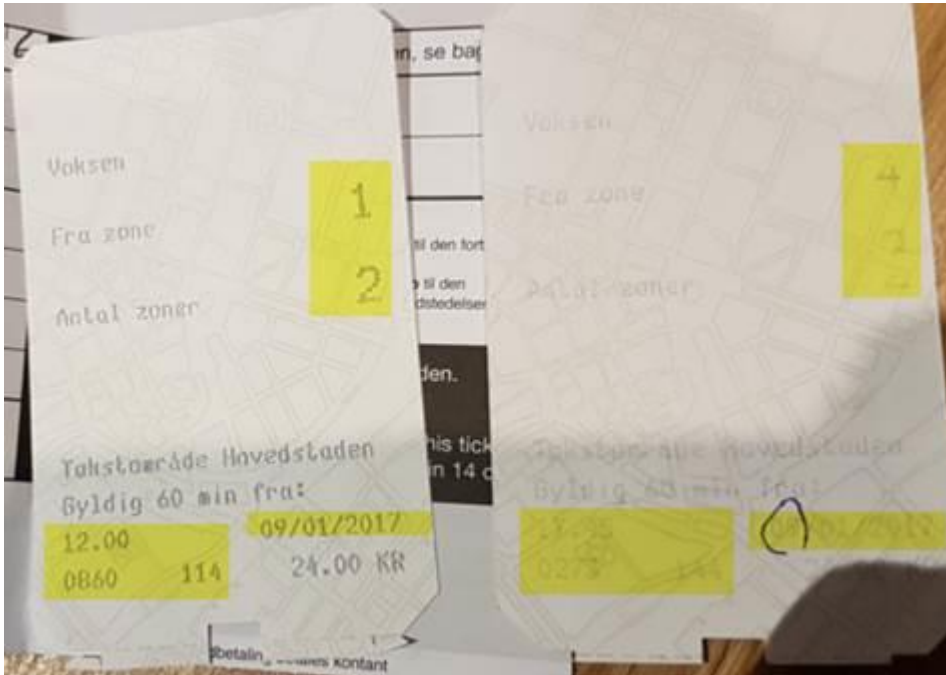
In cases where passengers are not able to present a valid ticket, a fare evasion ticket will be issued, which is currently DKK 750, - for adults. This basic rule is a prerequisite for the self-service system that applies to travel by public transport. The above mentioned information is available on www.m.dk 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 should 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 complainant and his girlfriend was met by a steward inspecting tickets on the 10th of January 2017 at 17:48 between Femøren station and Lufthavnen station. The couple presented an expired ticket bought the day before. As the couple was not able to present valid tickets, a fare evasion ticket was issued to each of them, according to the travel regulations.

and they also included a photo of two tickets, purchased at two different times on two different ticket machines on January 9.



We are a little uncertain why the complainants have attached a photo of two different tickets purchased the day before. Naturally, we note that the complainants have written that they could not read Danish and therefore they could not tell the difference between the tickets and therefore had come to throw the wrong tickets out.

However, it is our contention that the date indicated on the tickets can be read regardless of whether you understand Danish. In addition, there are information boards at all and every one of our stations that in Danish and English informs about the fare rules and validity, see below:



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.



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.

And since the complainants also stated that they, the previous days have purchased tickets, we cannot understand that the complainants should have the impression that they could buy tickets on the train. We are also puzzled that the complainants argue that they thought they could buy tickets on board, as the complaints the same time state that they believed that the tickets they carried were valid.

In the complainants' request to the Appeals Board, they have attached a copy of a 3 year old case from DSB, where a passenger has had his fare evasion ticket canceled.

We have read the attached copy, but do not think it has any relevance to this case as the DSB and Metro are two different companies.

At Metro we relate solely to whether you have a valid ticket when inspected, and process the cases from the applicable rules. How DSB consider and determines their cases can never be Metro's responsibility.

We are sorry if the complainants felt confused about how the Metro works in Copenhagen. But it is also our opinion that passengers should do an effort in familiarizing themselves with the 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.

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 had valid tickets when they were checked.

Although we have sympathy for the complainants challenges towards a low budget and risking to cancel another trip, we see ourselves unable to offer preferential treatment as we, at Metro, treat everyone equally. The requirement for valid ticket goes for all. No distinction is made, all travels on the same terms. There is thus no special rules for senior citizens, students, children, tourists, disabled or any other interest groups - apart from some disability organizations that previously has entered into special agreements for each of their members.”

På ankenævnets vegne



Tine Vuust
Nævnformand