

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2017-0227
- Klageren:** XX på egne vegne og på vegne af datteren YY
Schweiz
- Indklagede:** Metroselskabet I/S v/Metro Service A/S
CVRnummer: 21263834
- Klagen vedrører:** 2 kontrolafgifter på hver 750 kr. for manglende billet. Troede at kvitteringen for afvist køb var billetten. Den ene kontrolafgift er efterfølgende nedskrevet til 125 kr.
- Parternes krav:** Klageren ønsker kontrolafgifterne annulleret
Indklagede fastholder disse
- Ankenævnets sammensætning:** Nævnensformand, landsdommer Tine Vuust
Niels Martin Madsen
Torben Steenberg
Bjarne Lindberg Bak
Rikke Frøkjær

Ankenævnet for Bus, Tog og Metro har på sit møde den 21. december 2017 truffet følgende

FLERTALSAFGØRELSE:

Metro Service er berettiget til at opretholde kravet om klagerens betaling af kontrolafgifterne på i alt 875 kr.

Beløbet skal betales til Metro Service, som sender betalingsoplysninger 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, www.advokatsamfundet.dk og /eller eget forsikringssselskab om eventuel forsikringsretshjælp.

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SAGENS OMSTÆNDIGHEDER:

Klageren og dennes datter er fra Schweiz og var på ferie i Danmark. De ankom til lufthavnen den 27. juli 2017, hvor de med danske mønter købte billet til metroen i en billetautomat.

På returrejsen til lufthavnen den 31. juli 2017 fra Nørreport st. havde de mønter til billetautomaten, men kunne ikke finde nogen automat, som tog mønter, hvorfor klageren anvendte sit American Express betalingskort til at købe billet til metroen. Kortet havde hun anvendt flere gange på ferien uden problemer.

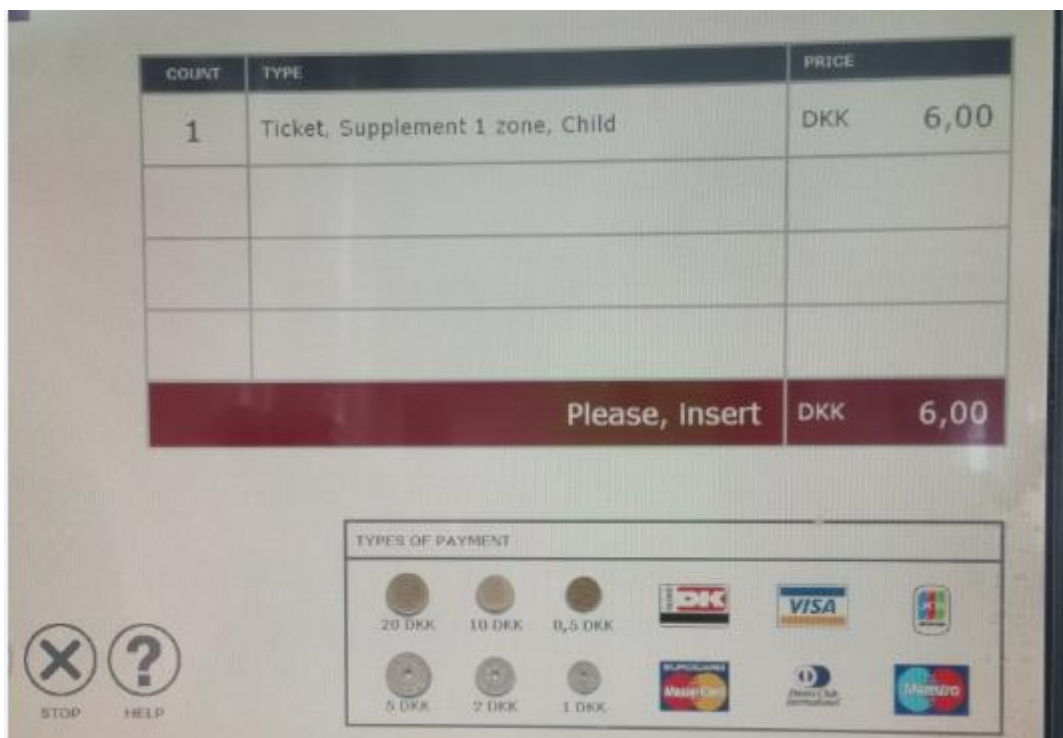
Da automaten udstedte en kvittering, hvor beløbet 72 kr. fremgik, regnede klageren med, at dette var en kvittering for køb af de 2 billetter, men at automaten ikke virkede, siden den ikke udskrev nogen billetter. Der var intet personale, som de kunne spørge om hjælp.

De steg derfor om bord på metroen mod lufthavnen i den tro, at der var betalt for 2 billetter, og at kvitteringen ville bevise dette.

Der var imidlertid tale om en kreditkortkvittering, som på dansk skrev, at købet var afvist og på engelsk anførte "This is a credit card receipt not a ticket". Når købet ikke kan gennemføres, kommer tillige følgende besked på displayet i betalingskortautomaten:



Metro Service har oplyst, at samtlige billetautomater tager mønter, og at det af skærmen ved køb af billet fremgår, hvilke betalingskort, som accepteres, og at American Express ikke er et af dem:



Ved kontrol af deres rejsehjemmel, blev de pålagt en kontrolafgift hver på 750 kr. Stewarden anførte i en note på kontrolafgiften, at klageren ikke havde set, at betalingen var afvist.

Den 4. august 2017 anmodede klageren Metro Service om at annullere kontrolafgifterne og henviste til sagsforløbet ovenfor samt tilføjede, at hun havde tastet sin pinkode og blot havde fået en kode 1020, da kortet var blevet spytet ud af maskinen, at hun fik at vide at stewarden, at automaterne ikke tog American Express, men hvis maskinen med det samme havde spytet hendes kort ud igen uden at anmode om pinkode, ville hun have forstået at noget var galt og kunne have anvendt sit andet betalingskort.

Metro Service fastholdt kontrolafgifterne den 7. august 2017 med den begrundelse, at passagerer selv er ansvarlige for at have gyldige billetter, at det tydeligt på billetter fremgår til hvilken kundetype de er gældende, og at det tydeligt var fremgået på kvitteringen, at denne ikke var en billet.

Under den efterfølgende ankenævns sag nedskrev Metro Service den ene kontrolafgift til 125 kr. på baggrund af, at de var familie som rejste sammen.

ANKENÆVNETS BEGRUNDELSE:

Et flertal på 3 medlemmer (Tine Vuust, Bjarne Lindberg Bak og Rikke Frøkjær) udtaler:

Den kollektive trafik i Hovedstadsområdet kører efter et selvbetjeningsprincip, hvor det er passageren, der som udgangspunkt bærer ansvaret for at være korrekt billetteret. Det fremgår endvidere af de fælles rejseregler for bus, tog og metro, at gyldig rejsehjemmel 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, idet der ellers kan udstedes en kontrolafgift på 750 kr.

Klageren og datteren kunne ved kontrol i metroen ikke forevise gyldige billetter, idet de alene var i besiddelse af en kreditkortkvittering på den afviste betaling. Kontrolafgiften blev herefter pålagt med rette.

Omend det kunne fremstå mere tydeligt visuelt, er der en tekst på talonen med ordene "Creditcard receipt, not a ticket". Derudover var der ikke noget i selve købsforløbet som kunne indikere, at det var en billet, der blev udskrevet fra automaten, når der på betalingskortautomaten stod "Declined Remove Card".

Vi finder herefter, at der ikke har foreligget sådanne særlige omstændigheder, at klageren og datteren skal fritages for at betale kontrolafgiften for rejse uden gyldig rejsehjemmel.

Det bemærkes, at pligten til at betale kontrolafgift ikke er betinget af, om passageren bevidst har forsøgt at unddrage sig betaling. Dette er et område med stor mulighed for omgåelse af reglerne om at skulle vise gyldig rejsehjemmel, hvorfor vi ikke finder, at der er grundlag for at fravige reglerne om, at passageren selv bærer ansvaret for korrekt billettering.

Uanset om Metro Service kan ændre i teksten "AFVIST" eller ej, finder vi anledning til at anmode Metro Service om at iværksætte tiltag over for Nets for at tydeliggøre denne information, således at ikke-dansktalende kunder oplyses om, at talonen ikke er en billet, samt at købet er afvist.

Ankenævnet oplever et stort antal sager med ikke-dansktalende passagerer, som rejser uden billet af den ene eller anden årsag. På den baggrund henstiller vi til, at det på engelsk skiltes endnu mere tydeligt på perronerne, at det koster en kontrolafgift på 750 kr. at stige på metroen uden billet, og at billetter ikke kan købes om bord.

Et mindretal på 2 medlemmer (Niels Martin Madsen og Torben Steenberg) udtaler:

Den kollektive trafik i Hovedstadsområdet kører efter et selvbetjeningsprincip, hvor det er passageren, der som udgangspunkt bærer ansvaret for at være korrekt billetteret. Klageren og datteren kunne ved kontrol i metroen ikke forevise gyldig billet, idet de kun var i besiddelse af en kreditkortkvittering på den afviste betaling. Kontrolafgiften blev herefter pålagt med rette i selve kontrolsituationen.

På kvitteringen for den afviste betaling var der en engelsk tekst: "CREDIT-CARD RECEIPT, NOT A TICKET", men selve oplysningen om, at betalingen var afvist, fremgik alene på dansk med ordet: "AFVIST".

På kvitteringen figurerede derudover dansk tekst "køb" efterfulgt af det beløb, som klageren havde bestilt billet for; i dette tilfælde DKK 72,00. Det var således efter vores opfattelse ikke tydeligt for klageren, som er ikke-dansktalende, at der ikke var betalt for billetterne, og at købet var afvist.

Klageren var derfor i berettiget forventning om at have betalt for billetterne, men at disse eventuelt grundet en fejl ved automaten ikke blev udskrevet.

Uanset om Metro Service ikke bestemmer teksten på kvitteringen, finder vi, at Metro Service i relation til udstedelse af billetter i deres billetautomater, må anses for ansvarlig leverandør af billetter og kvitteringer til kunderne og dermed ansvarlig for, at kunden gives tilstrækkelig information.

Selvom klageren måtte have valgt engelsk som sprog ved billetbestillingen, skrives teksten "AFVIST" udelukkende på dansk på den kvittering, som udstedes fra billetautomaten. Vi finder, at dette forhold vejer tungere, når det skal bedømmes, om der gives tilstrækkelig information til kunderne, end at det på displayet på betalingskortautomaten stod anført på engelsk "Declined. Remove Card".

Vi finder herefter, at der har foreligget sådanne særlige omstændigheder, at klageren skal fritages for at betale kontrolafgifterne ved rejse uden gyldig rejsehjemmel. Vi noterer os, at klageren har indbetalt beløbet for rejsen til ankenævnets sekretariat, som videresender dette til Metro Service. Vi bemærker, at der i et tilfælde som det foreliggende ikke ses at være omgåelsesmuligheder, da automaten netop ikke har udstedt billetter, som andre passager ville kunne anvende som rejsehjemmel.

I de tilfælde hvor et køb måtte være gået igennem med udstedelse af billetter, og en passager alene foreviser kvitteringen for købet, vil der ikke stå "AFVIST" på denne, og omstændighederne vil derfor ikke være sammenlignelige med nærværende sag.

Ankenævnet oplever et stort antal sager med ikke-dansktalende passagerer, som rejser uden billet af den ene eller anden årsag. På den baggrund henstiller vi til, at det på engelsk skiltes endnu mere tydeligt på perronerne, at det koster en kontrolafgift på 750 kr. at stige på metroen uden billet, og at billetter ikke kan købes om bord."

Der afsiges kendelse efter stemmeflertallet.

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.

I de dagældende fælles landsdækkende rejseregler, fremgik hjemmelen til udstedelse af kontrolafgift. Det anførtes 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.

Kunder, der ikke på forlangende viser gyldig rejsehjemmel, herunder er korrekt checket ind på rejsekort til deres rejse, skal betale en kontrolafgift på 750 kr. for voksne. Trafikvirksomheden kan nedskrive kontrolafgiften til 125 kr., hvis der foreligger særlige omstændigheder.

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører følgende:

After having written to customer service of Metro Service Copenhagen and having received a negative answer I apply to The Appeal Board for Bus, Train and Metro. The necessary fee for the handling procedure in the appeal board should already has been transferred by my bank.

Let me explain.

My daughter and I left on the 27th of July for a city trip. We went from [xx] (where we live) to Zurich by train and then from Zurich to Copenhagen by plane. We arrived around 9 o'clock in Copenhagen. On our way to the metro station we bought our metro ticket at a vending machine. We paid using cash money. During the weekend we walked a lot around Copenhagen and did not need one single ticket on a bus or metro. During our stay I paid all the bills in shops, restaurants, the Tivoli, museums etc. using my American Express credit card. Nobody ever complained about the brand of the card.

On Monday, 31st of July we left at 8 o'clock to the metro station Noerreport to take the M2 to the airport. I had kept the right amount of cash (DKK 72) for the vending machines. Unfortunately we did not find a ticket vending machine at the station where we could pay cash. So I took my American Express credit card and put it into the slot. Then I entered the PIN as the machine asked. A credit card receipt was printed with the following contents :

```
2017-07-31 08 :09
KOB DKK 72.00
AMERICAN EXPRESS
XXXX XXXX XXX4 489
TERM : 05257515-227736
DA1 PBS NR :0003352269
PSAM : 5374978-0000247286
STATUS :1020
```

AFVIST

ASW1 ASW2 :1311

Dette er en kreditkortkvittering – ikke en billet.

This is a credit card receipt – not a ticket.

Unfortunately no ticket was printed. Of course I saw that on the credit card receipt it was written that it was not a ticket. Having a credit card receipt in my hand which stated that I had paid 72 DKK – which was the fare to the airport for two persons – I thought that the vending machine did not work right and therefore no tickets were printed. I was sure to have paid correctly. Nobody was around to ask so we went downstairs to the rails and hopped on the metro that was about to leave.

When we were controlled we found out what the only Danish word on the receipt that did not have a translation meant – that the payment was rejected. We were told that we were unable to present a valid ticket and that we therefore had to pay a fine. The lady who was writing the fine wrote some

words on the sheet about how it happened that we did not have paid. And she told us to write to Customer Service of Metro Service. This is what we did.

I enclose some photographs chosen specifically to show that we do not cheat with tickets and that the whole mess came because of a number of misunderstandings :

Photograph 1 : Credit card receipt

Photograph 2 : Our fines + the cash money we had prepared to pay for the tickets + our flight tickets – showing that we had the intention to pay for our tickets but that it was not possible to pay with cash money

Photograph 3 : The cash money we had prepared to pay for our tickets

Photograph 4 : The ticket we had used on 27th of July – showing that we had paid for our tickets when going to the city – and all the tickets we used for going to and from the airports (in Switzerland and in Vienna).

We received the enclosed answer which is a collection of paragraphs put together according to the topic discussed – but not dealing specifically with our case.

We were told that the ticket vending machines do not accept American Express credit cards. In this case I do not understand why the card is not returned right away. Once I have to enter the PIN and get a printed credit card receipt I believe that the card was accepted and that I had paid the amount stated on the receipt. It never crossed my head that the brand of the credit card could produce a problem – after having paid for numerous bills using the same card.

When trying to pay for our tickets the vending machine printed a piece of paper with the text on it « This is a credit card receipt – not a ticket. » There also was the word «afvist» on it which we did not understand. Please note that by definition a «receipt» is a «Quittung» in German, a «kvittering» in Danish. Which means a written acknowledgement of having received, or taken into one's possession, a specified amount of money, goods, etc. So the word «receipt» is misleading for a something that is rejected, dismissed, refused!

www.dictionary.com: **receipt**

1. a written acknowledgment of having **received**, or taken into one's possession, a specified amount of money, goods, etc.
2. receipts, the amount or quantity received.
3. the act of **receiving** or the state of being received.
4. something that is received.

On the receipt most oft the text is in Danish plus the English translation. Unfortunately the most important word «afvist» ist not written in both languages. Why? Why is there no explanation stating

the reason why the payment ist not accepted? For tourists who are not speaking Danish the contents of this receipt ares impossible to understand!

These five facts – not being able to pay with cash money, having to enter the PIN, receiving a printed credit card receipt, having a receipt in hands that is not a receipt but a denial, and not being able to understand the most important word on the whole sheet led to my misunderstanding of the situation. I misinterpreted the text «This is a credit card receipt – not a ticket». I understood it as an information that I should get tickets as well which we did not – due to a machine problem as I guessed at that moment. I definitely did not understand it as a warning that something had gone wrong with the payment.

I learned a lot from this ill-fated situation : I will never again believe that a vending machine does not work right when not all the papers are printed that I expect. And I will actively search for someone who can explain to me a) what went wrong, b) how the specific vending machine works and c) what the text on the papers mean. We never intended to cheat. This is why I photographed the ticket we used on our way from the airport and why I enclosed a photograph of the DKK 72 in cash.

I hope that the Metro Service also learns from this case:

- Please show much clearer that American Express credit cards are not accepted. Before the customer must enter a PIN !
- Do not use « credit card receipt » when the payment was refused due to a credit card brand that is not accepted. This is misleading.
- And please translate the most important word on the credit card receipt so that also tourists understand that their payment has been refused.
- It would also be helpful to have at least one vending machine per station (and an information where to find it) where one can pay using cash money. Copenhagen seems to be very modern. Everything can be paid using credit cards – and obviously metro tickets can only be paid by using a credit card. But what about all the people who are not so much used to paying everything with cards: tourists, elder people?
We made all the right attempts to buy metro tickets. But somehow it did not work – and we could not find out at this moment. Of course I am willing to pay for the tickets! But I am not at least convinced that having to pay these heavy fines is the right reaction to this situation.

I thank you in advance to evaluate this case and I look forward to your answer.

Yours sincerely

Ursula Fischer-Sterl and Larissa Fischer

Enclosed:

Photograph 1: Credit card receipt page 4

Photograph 2 : Our fines page 5

Photograph 3 : The cash money we had prepared to pay for our tickets page 6

Photograph 4 : The ticket we had used on 27th of July – showing that we had paid for page 7
our tickets when going to the city – and all the tickets we used for
going to and from the airports

Answer from Customer Service (Metro Service), dated 2017-08-07 page 8

Initial Request to Customer Service (Metro Service), dated 2017-08-04 page 9

I checked the attachment and want to comment to the photograph of the ticketing machine: I cannot say whether the machine we used had a slot for coins. But I am sure that it did not have a slot to place paper money into. When having to pay a fare to the airport (36 per person as I recall = 72 for two passengers) a slot for coins may not be enough. I had the money for both tickets with me – a mixture of coins and paper money. This I definitely was not able to use. And it was said that Nørreport is one of the busiest stations in Copenhagen. Probably also for tourists... At the airport when we arrived we found a ticketing machine that took all: coins, paper money and probably also (credit) cards – this is the reason why I expected all machines to be the same.

As far as I can see on the photos there is no sign that some credit cards are accepted and others are not.

Yes, there are the yellow buttons to call for help. We did not. I would not do this, neither in Switzerland nor somewhere else. Because this usually does not work. Usually there are no persons behind this button. Obviously I underestimated Copenhagen's Metro – I am really sorry for that!

To sum up:

- I did not use the yellow help button.
- I understood the „receipt“ I received as a receipt for the payment – which it was not - .
- We jumped on the waiting train instead of looking for help at the rails.
- I do not accept to pay a lot of money for a misunderstanding on our side and a misuse of words on Metro's side

- Metro misuses the word «receipt » for something that is a rejection of a payment. So when I saw that something was wrong with the tickets (because they did not appear) I still was sure that I had paid for our fare.
- Unfortunately the ticketing machines are different – at the arrival/airport to at Norreport station
- The most important words on the «receipt » are in Danish. Everything else is written in English. In our case a fatal language problem!
- Metro does not accept that customers may make mistakes – even though they receive pages and pages and pages of explanations and fotos

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 two complainants was met by two stewards inspecting tickets on the 31th of July 2017 at app. 08:45 between Femøren station and Lufthavnen/Airport station. The two companions had no tickets, but just a print from the ticket vending machine, saying 'This is a credit card receipt – not a ticket'. Since they had no valid tickets a fine was issued to each of them according to current regulations.

This is the print from the vending machine that the complainants presented to the stewards:



From the code lines “1020” and “ASW1-ASW2” we are informed that the card-chip was not readable and therefore the card purchase could not be validated. In situations where the card is rejected, the green display at the card payment machine shows this text:



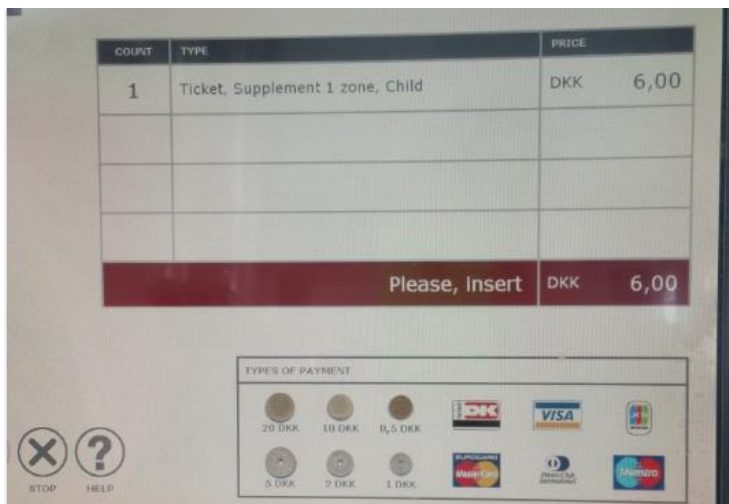
If the complainants had read the text on the display and also had read the text on the printed talon they would immediately have been aware that the purchase was not completed and that they had no tickets. At the ticket vending machine itself there is a call point that you are welcome to use and that connects you with an employee in the Control Tower to help and guide. In addition to the call point on the machine, there are also yellow call points on the station itself where you can get help.

The complainants write that *“Nobody was around to ask, so we went downstairs to the rails and hopped on the Metro that was about to leave”*.

The complainants started their journey at Nørreport station. As Nørreport station is one of the busiest stations in the metro area, it is always staffed with uniformed stewards who are ready to give advice and guidance. In addition, at the Nørreport station there is also a large 24-hour 7-Eleven shop, which sells tickets.

The complainants also explains *“I had kept the right amount of cash for the vending machines. Unfortunately we did not find a ticket vending machine where we could pay cash”*.

It is not correct that the complainants could not find a vending machine that accepts cash - as ALL our ticket vending machines accepts cash. When you have completed your ticket order, you have to choose how you want to pay - see the example below. The example also shows which credit cards are accepted, and American Express is not included:

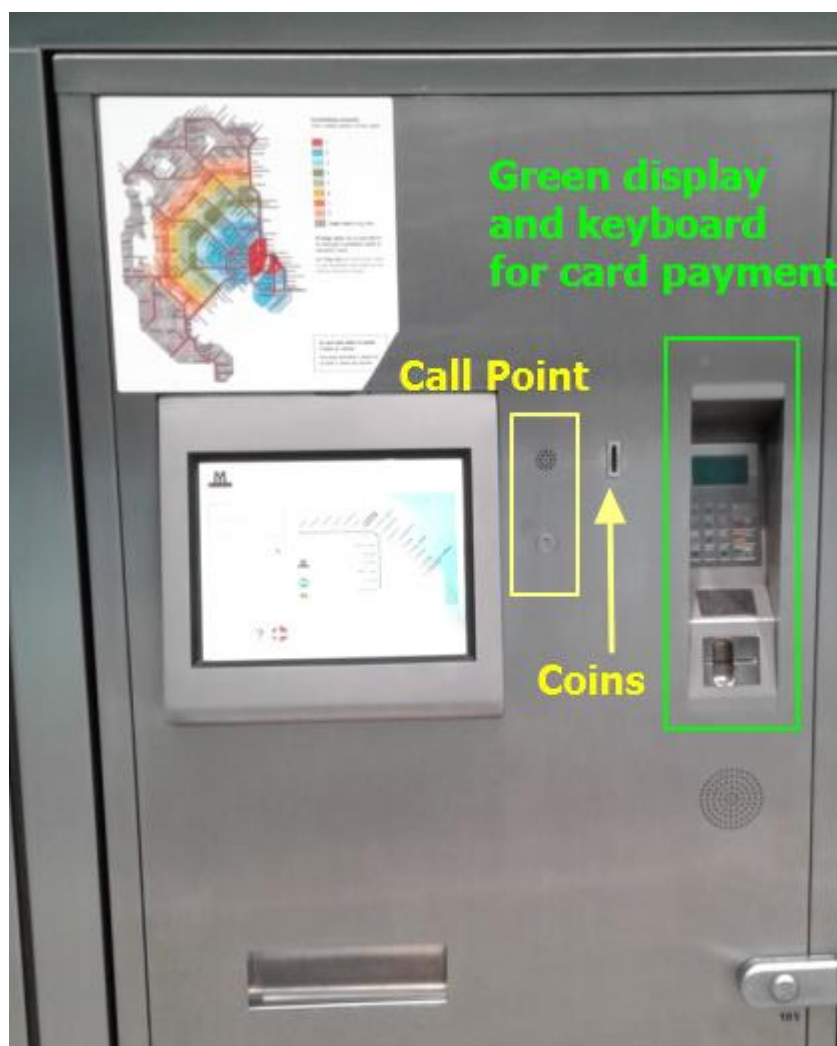


We must emphasize that we never adhere to our customers' intentions regarding the purchase of tickets, but exclusively to the facts. At Metro we treat everyone alike, the requirement for a valid ticket applies to everyone. There is no difference, everyone travels under the same conditions. There are thus no special rules for pensioners, children, tourists, disabled people or any other interest groups - except for certain disability organizations who have already concluded special agreements for some of their members. Facts in the specific case are that the complainants had no valid tickets. It is our claim that the text on both the payment terminal and the printed receipt, as clearly as possible, informed that the purchase was not completed, and that the complainants therefore did not have a ticket in hand, but had to seek guidance before boarding.

At Nørreport station we have two ticket machines, see photo below. The ticket machines at Nørreport station are completely identical to all our ticket machines at all other stations. And all vending machines are provided with a call point and a coin deposit in addition to the ability to pay by credit card. Next to the ticket machines at Nørreport are placed additional call points (yellow), if you do not want to use the call point on the machine itself.



The green display that we refer to in our previous answer is located immediately above the keyboard where you enter your pin code and, in our opinion, it is not possible to overlook - see the close up of the ticket vending machine from Nørreport station below.



The text on the printout "This is a credit card receipt" does not stand alone. The total text is "This is a credit card receipt - not a ticket" and the printout will come out of the machine after the green display, immediately above the keyboard on the payment terminal, has informed "Declined - Remove card" and if the complainant had read the messages on the green screen and the printout she would not have doubted that she did not have tickets in her hand.

The fact, that the complainant did not use the call points available, because they allegedly do not work in other parts of Europe, we think is not relevant to this case.

We wonder how the complainant thinks we should be able to distinguish between intentional cheating or unintentional mistakes? As far as we recall, it has never happened that anyone has objected against a fare evasion ticket and at the same time told that they intentionally failed to buy the ticket. All inquiries are obviously explained by misunderstandings and all the complainants ask for special treatment. But it is not possible for us to differentiate between the reasons for missing tickets and therefore we deal solely with facts.

The complainant writes in her latest mail to the Appeal Board that she has paid DKK 72 as payment for 2 tickets. We have not received any money from the complainant and the account number / bank connection she mentions is neither our account nor our bank.”

Beløbet, som klageren oplyser at have betalt for billetterne er modtaget i sekretariatet.

På ankenævnets vegne



Tine Vuust
Nævnetsformand