

## AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

<b>Journalnummer:</b>	2017-0244
<b>Klageren:</b>	XX Lima, Peru
<b>Indklagede:</b>	Metroselskabet I/S v/Metro Service A/S
<b>CVRnummer:</b>	21263834
<b>Klagen vedrører:</b>	Kontrolafgift på 750 kr. for manglende zone på billet
<b>Parternes krav:</b>	Klageren ønsker kontrolafgiften annulleret Indklagede fastholder denne
<b>Ankenævnets sammensætning:</b>	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 19. februar 2018 truffet følgende

### **AFGØRELSE:**

Metroselskabet I/S 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 I/S v/Metro Service A/S, som sender betalingsoplysninger til klageren.

Da klageren ikke har fået medhold i klagen, tilbagebetales klagegebyret ikke, jf. ankenævnets vedtægter § 24, stk. 2, modsætningsvist.

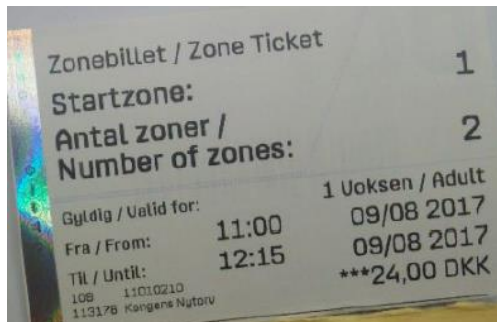
- oOo -

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](http://www.domstol.dk), [www.advokatsamfundet.dk](http://www.advokatsamfundet.dk) og /eller eget forsikringssselskab om eventuel forsikringsretshjælp.

## SAGENS OMSTÆNDIGHEDER:

Klageren, som er ikke-dansktalende, rejste den 9. august 2017 fra Kongens Nytorv st. til Lufthavnen st. med Metroen. Efter Femøren st., som er sidste station i zone 03, inden Metroen kører ind i zone 04, var der kontrol. Klageren foreviste en 2-zoners billet med startzone i zone 01.



Da der kræves en 3-zoners billet for at rejse fra Kongens Nytorv st. til Lufthavnen st., blev klageren pålagt en kontrolafgift på 750 kr.

Klageren anmodede den 14. august 2017 Metro Service om at frafalde kontrolafgiften med den begrundelse, at han ville have købt en 3-zoners billet, som han var blevet vejledt til af en metrosteward, men ved købet kom han til at trykke forkert på touch-skærmen på grund af dens sensitivitet. Da han så den printede billet, forstod han oplysningerne således, at startzonen skulle lægges sammen med de to zoner, hvorfor han fik den opfattelse, at han havde købt tre zoner. Klageren medsendte en video af købsflowet på billetautomaten.

Metro Service fastholdt den 15. august 2017 kontrolafgiften og henviste til, at klageren havde købt en 2-zoners billet i zone 01, hvorfor denne ikke var gyldig i zone 04. De anførte endvidere følgende:

”

You selected the wrong amount of zones, when purchasing the ticket to the airport. In your complaint you describe experiencing problems with the screen of the ticket vending machine. From the attached video, we cannot confirm any problems with the machine as it is not clear from the video, whether you are selecting two or three zones. However, you are informed of the amount of zones you have selected all through the purchase flow, and therefore it is unfortunate that you were not aware of the wrong amount of zones. Like all other means of public transportation in the greater Copenhagen area, the Copenhagen Metro employs a self-service system and it is your responsibility to ensure that your ticket has the correct number of zones and that it is valid for the entire journey. Furthermore, you must be able to show the ticket in case of a ticket inspection.

”

## **ANKENÆVNETS BEGRUNDELSE:**

Klageren kunne ved kontrollen i Metroen den 9. august 2017 i zone 04 ikke forevise gyldig rejsehjemmel, da hans billet kun var gyldig til to zoner fra zone 01, hvilket for klagerens rejserute kun var i zonerne 01 og 03. Kontrolafgiften blev hermed pålagt med rette.

Det af klageren anførte om, at han købte det forkerte antal zoner på grund af problemer med billetautomatens fingertouchsystem, kan ikke føre til et andet resultat, da det fremgik under købsforløbet og før klagerens betaling, at han havde valgt en 2-zoners billet. Klageren kunne derfor have afbrudt købet, da han trykkede forkert på touchskærmen.

Det kan endvidere ikke føre til et andet resultat, at klageren fejlagtigt troede, at startzonen (01) og det købte antal zoner (2) kunne lægges sammen og blive til en 3-zoners billet, idet der efter ankenævnets opfattelse ikke er noget på billetten, der indikerer, at dette skulle være tilfældet.

Pligten til at betale kontrolafgift er ikke betinget af, om passageren bevidst har forsøgt at unddrage sig fuld betaling for rejsen, og da dette er et område med stor mulighed for omgåelse af reglerne om at kunne forevise gyldig rejsehjemmel, finder ankenævnet, at der ikke har foreligget sådanne særlige omstændigheder, at klageren skal fritages for kontrolafgiften.

## **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, som trafikvirksomhederne har vedtaget, fremgår hjemmelen til udstedelse af kontrolafgift. 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.

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.

## **PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:**

### **Klageren anfører følgende:**

"I am writing to you as I have a complaint regarding the fine that has been granted to me. I went through Copenhagen one night because I had a flight from Berlin to Los Angeles. My host told me to be very cautious about buying the ticket, so I made sure to ask a train manager at the station before making the purchase. I was at the Norreport station and I had to go to the airport. When I asked the train manager, he

confirmed that I had to buy a 3 zone ticket. When making the purchase, and being the screen to touch with the fingers, my intention has been to finger with 3 zones, however the sensitivity of the screen has been such that I scored another result. When I saw the printed ticket, it came out that the starting zone was 1 and zones 2, so in my head I added up both numbers and thought OK, this is fine because the results is 3 between both numbers. I -being a tourist- don't have to know exactly how it works cause I'm not from there. It has not been my intention to make this mistake, have no clue of prices or transport system in Copenhagen cause I was just one night for my flight layover and I am sure that more than one tourist passes through the same of what happened to me since the shopping screen that is handled with the finger can be very sensitive and mark results that one does not wants. Here I also leave a video of a simulation of how it was that I did so that you see that it is very easy to make a mistake:

<https://youtu.be/i8RVNHaa-YO>

As explained above, it was not my intention to make the mistake and therefore with this communication I expect the refund of the fine.

On the other hand, I suggest reviewing the user experience with Copenhagen transport machines as a tourist can really be caught unaware and the tourist does not have to know exactly how the city works or what the ticket should say. Maybe having a touchscreen is not the best idea since these errors occur and should work with buttons. It may be retrograde, but since this has happened to me unintentionally and I have been fined I think it should be reviewed to make sure that every user can use it without problems."

### **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 a valid ticket cannot be presented upon request, the passenger must accept a fine, which currently is 750 DKK. This basic rule is a premise for the self-service system used in the Metro. This information can be found in the Common Travel Regulations found on [www.m.dk](http://www.m.dk) as well as on the Information walls on all stations. The Information walls are all in both Danish and English language.

In the case in question, the complainant was met by a steward inspecting tickets on the 9<sup>th</sup> of August 2017 at 11:26 after the train has left Femøren station (zone 03) heading into zone 04 for Lufthavnen station. The complainant presented a two-zone ticket bought in zone 01. Since the complainant did not have a valid ticket for zone 04, a fare evasion ticket was issued, according to the travel regulations.

In his inquiries, the complainant explains that he knew very well that he needed a 3-zone ticket on his journey from City to the Airport because he had asked a train manager.

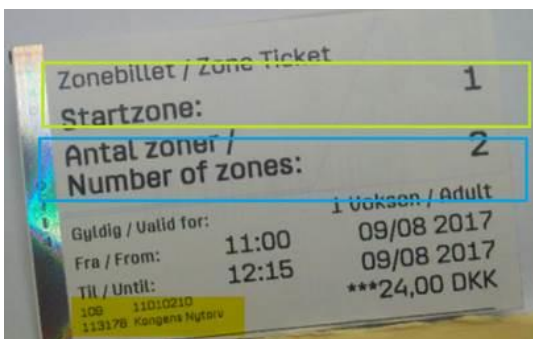
The complainant stated that he was at Nørreport station and that the touch-screen was too sensitive and that the complainant therefore came to hit the wrong zone key, and when the ticket came out of the vending machine, the complainant simply added up "Startzone: 1" along with "Number of zones: 2" and concluded that the two numbers together gave " 3 "and that he had bought the correct ticket.

To support his explanation, the complainant has recorded a video of the ticket purchasing process and attached to both the Metro and Appeals Board.

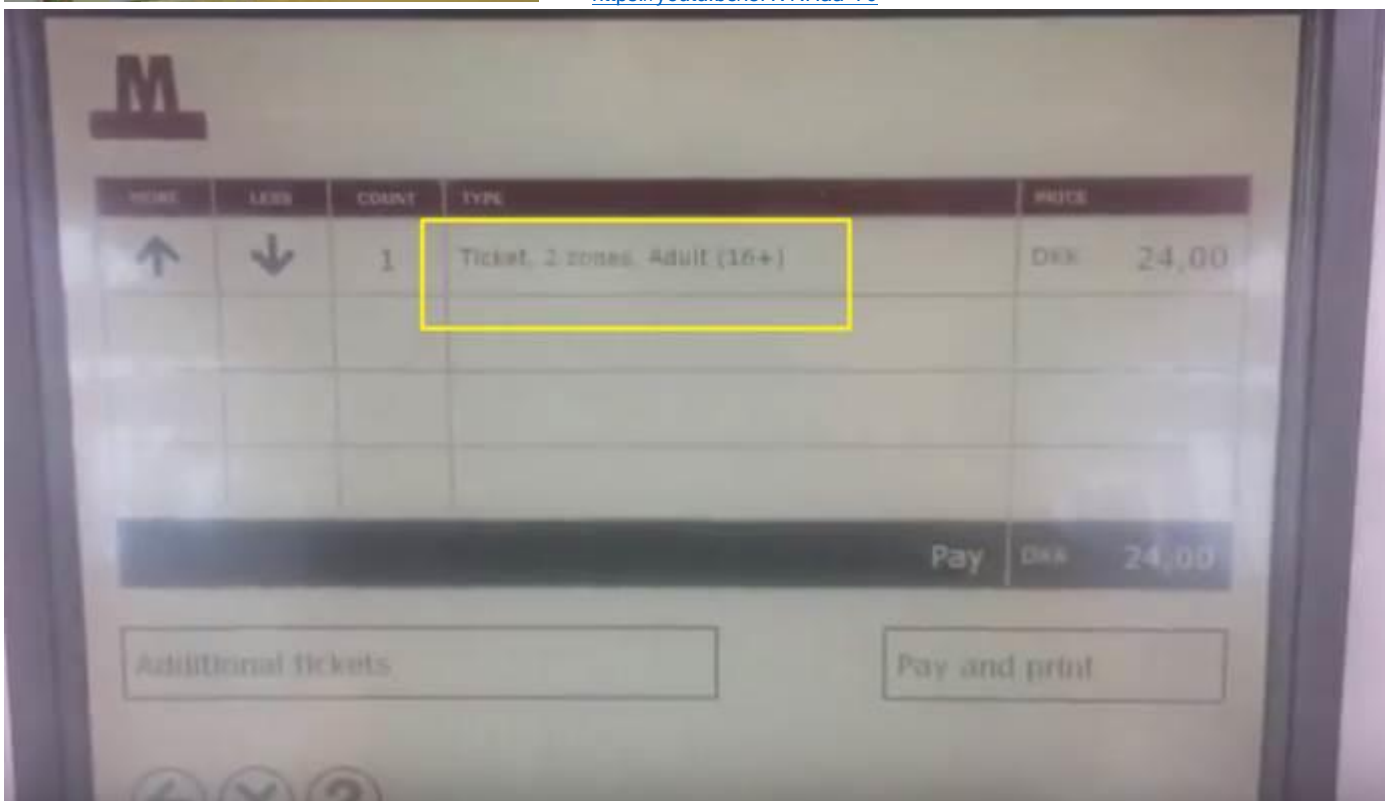
The steward took a photo with his PDA of the ticket the complainant presented during the ticket control. This ticket does not originate from a machine at Nørreport as the complainant tells, but is purchased at Kongens Nytorv station.

In our opinion, it is clearly written on the ticket that the number '1' refers to the start zone and the number '2's to Antal zoner/Number of Zones and we wonder how the complainant has concluded that if he put the two values together, he then stood with a 3-zone ticket.

We have reviewed the complainant's video recording many times. First of all, we cannot recognize that it would be harder to press the button for 3 zones than for 2 zones. Additionally, the complainant's video recording also shows the screen that says what you are buying - before you tap payment - see the still image from the video below. The picture clearly indicates that the complainant is about to purchase an adult ticket of 24 kroner, valid for 2 zones.



<https://youtu.be/i8RVNHaa-Y0>



It is therefore our claim that our ticket machines operate as intended and that the missing zone is solely due to the fact that the complainant did not use the machine correctly, and did not read the text on the screen before completing the purchase., so we maintain our claim for payment of control fee [xx] of DKK 750, -

On September 13, our financial department sent a payment reminder to the complainant. If it can be confirmed that the Board of Appeal has received the complainant's payment of the appeal fee by 13 September, we will cancel the payment reminder. Otherwise, we also maintain our claim for payment of the reminder of DKK 100, -"

**Hertil har klageren bemærket:**

"I have proceeded to read all the attachments that you have sent me, as well as the response of the transport system of Copenhagen. Sincerely I already proceeded to download all my complaint in the clearest and most honest way possible. I have told every detail of my story. I have even been honest in telling that my host warned me about the transport system, that I consulted with a transport manager before buying the ticket to make sure I did it well and that when I bought it I had a confusion -as any human being can have it- in terms of adding the numbers and assume that they were 3 zones. Taking into account also the sensitivity of the screen that I think they should review, since they say that the video is not clear, but if they try it personally they could realize that it is not well calibrated and it doesn't offer a good user experience. I am not a citizen of the city of Copenhagen and I do not have to know clearly how the transport system works and as a tourist who is passing through a connection on a flight one night, I can be wrong and that is why I have resorted to you as mediators and I am paying for the case review service because I am sure of what I am claiming and this fine seems to me to be totally unfair towards me.

I leave it to the judges to decide the final resolution and give me the answer."

På ankenævnets vegne



Tine Vuust  
Nævnformand