

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer:	2017-0274
Klageren:	XX England
Indklagede: CVRnummer:	Metroselskabet I/S v/Metro Service A/S 21 26 38 34
Klagen vedrører:	Kontrolafgift på 750 kr. grundet manglende rejsehjemmel, da de ikke kunne finde en billetautomat på perronen
Parternes krav:	Klageren ønsker kontrolafgiften annulleret Indklagede fastholder denne
Ankenævnets sammensætning:	Nævnnsformand, 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. dog med bemærkning om tydeliggørelse på elevatoren

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.

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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, som er fra England, havde været på sit første besøg i København, og skulle den 26. september 2017 med metroen fra Nørreport st. til Lufthavnen st. Ifølge klageren spurgte han om hjælp til at finde metroperronen og blev henvist til en elevator, som han herefter benyttede. Nede på perronen ledte han efter en billetautomat men uden at finde nogen. Efter at han havde ladet to tog køre, mens han ledte efter en billetautomat, steg han på metroen uden billet, da han ellers ikke ville kunne nå sit fly.

Efter at metroen havde forladt Amagerbro st., var der kontrol af klagerens rejsehjemmel, og da han ikke havde nogen rejsehjemmel, blev han pålagt en kontrolafgift på 750 kr.

Klageren anmodede den 26. september 2017 Metro Service om at annullere kontrolafgiften og anførte til støtte herfor som ovenfor, samt at det ikke var muligt at spørge om hjælp på perronen.

Metro Service fastholdt den 28. september 2017 kontrolafgiften med henvisning til selvbetjeningsprincippet, samt at information vedrørende billetter er tilgængelig på engelsk på alle stationer.

Under den efterfølgende ankenævns sag har klageren tilføjet, at Metro Service ikke har adresseret de specielle omstændigheder, han påberåber sig, samt at der ikke var tilgængelig information på engelsk vedrørende billetter, som Metro Service påstår.

Metro Service har fremlagt billeder, der dokumenterer, at det på døren til den pågældende elevator står angivet både på dansk og engelsk, at elevatoren ikke stopper ved billetautomaterne, og at man skal benytte den anden elevator for at komme til disse. De har desuden tilføjet, at der på gadeniveau er to 7/11 butikker, hvor man kan købe billetter.



Den anden elevator, som stopper ved billetautomaten, har følgende skiltning inde i elevatoren:



ANKENÆVNETS BEGRUNDELSE:

Klageren kunne ikke forevise gyldig rejsehjemmel, da han var steget ombord på metroen uden forinden at have købt en billet. Kontrolafgiften blev derfor pålagt med rette.

Ankenævnet lægger til grund, at klageren efter ombordstigning måtte have kunnet konstatere, at der ikke var mulighed for at købe billet om bord på metroen. Klageren burde derfor ikke været blevet om bord på metroen, men skulle være steget ud for at købe billet straks derefter. Klageren undlod dette og blev i stedet på metroen tre stop, hvorefter de blev kontrolleret.

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 bemærker dog, at der ikke generelt kan henvises til, at turister bør kunne gennemskue, at der er mulighed for at købe billetter oppe på gadeniveau i 7/Elven. Ankenævnet bemærker videre, at der kun på den elevator, som *ikke* kan benyttes ved billetkøb, er en engelsk tekst, hvorimod den elevator, som rent faktisk *skal* benyttes, hvis man skal købe billet, ikke har nogen tekst på engelsk om, hvor billetter kan købes, men et lille piktogram, som ikke er nemt forståeligt.

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 forevise 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 received a 'fare evasion' ticket for 750 DKK on 26/09/17 from the Steward ID [...], while travelling from Norreport to the airport. I thought this was **not a fair fine**, since this was my first time on the metro in Denmark and I had tried very hard to buy a ticket, but it had not been possible due to the absence of any ticket machine. I was not trying to evade the fare. Even the steward who issued the fine said that he appreciated my circumstance and would include a note in support for me. Put very simply, when asking for directions to the metro I was directed to an elevator, which took me straight from street level to the platform level, where there were no ticket machines, nor any information boards. I looked everywhere but could not find anywhere to buy a ticket. There were no signs indicating where a ticket might be bought. At risk of missing my plane, I decided to get on a train and planned to explain to an attendant the situation, fully willing to buy a ticket on the train. I was instead issued a fine. I explained the situation in my online appeal, however the response from Metro Kundeservice made no reference at all to any of these points, which is why I would like to take the issue further. I have never in my life received a ticket penalty since I always do my best to purchase the correct ticket.

Below I enclose my original explanation, the response from Metro Kundeservice (which fails to address any of the relevant points), and a brief follow-up. Based on this information, I would very much appreciate your understanding in this case, and I would be very grateful if you could cancel the fine.

"I was upset to receive a fine while travelling from Norreport to the airport this morning. This was my first attempt at using the Copenhagen metro (and my first visit to Copenhagen). On reaching Norreport I asked for directions, and was directed to an elevator (near the foodmarket) which took me straight to the platform level. I spent several minutes looking for somewhere to buy a ticket, but could not find any machine, or anyone to ask. I let two metro trains go by but then realised I needed to get a train otherwise I would be late for my flight to London. I had been fully intending to buy a ticket at Norreport, and fully prepared to buy one on the train or at the airport station. I therefore politely suggest that it is not appropriate to issue me a fine, since I had made every effort to buy a ticket - however there was no opportunity to do so (no ticket machines) and no information about where ticket machines were located. On issuing the fine, the metro attendant said he understood this and had made a note to this effect - I

hope you find this note along with the fine record. The attendant said I was not the first person to suffer from these problems. It is simply not possible to buy a ticket if there are no ticket machines at any point from entry into the station until the train, nor any indication of where ticket machines may be located. As mentioned, this was my first visit to Copenhagen and my first use of the metro. I was not aware of the location of the ticket machines and did my best to buy a ticket, but there were no ticket machines. I remain fully prepared to pay the standard ticket price, but I do consider the fine excessive and inappropriate. I found the whole experience very stressful, and very much hope you will cancel the fine. I look forward to your response. In all other ways I found the metro, and Copenhagen, extremely impressive. Yours sincerely [...]"

The response from Metro Kundeservice (Sep 28) simply said:

"Like all other means of public transportation in the greater Copenhagen area, the Copenhagen Metro employs a self-service system where you must be in possession of and ready to present a valid ticket, before boarding the train and during travel. It is not possible for our stewards to take the intention and good faith of the passengers into consideration. It is always the passenger's responsibility to purchase and be in possession of the required ticket.

Information regarding tickets, validity as well as the zone system is available in English at all stations on the information boards. If you need assistance or have questions, you can contact us using the call points at the stations and on the ticket vending machine."

This formulaic response is not satisfactory. It did not address any of the specific points I raised. Also, while I understand why the steward was obliged to issue the fine, he did make clear to me that it was within the power of Metro to cancel the fine, which is why I appealed. In addition, as explained above, *there was no information about ticket or validity, nor any ticket vending machine, from entering the station at Norreport until the platform itself.* The second paragraph is simply false in this particular case.

This was the problem.

Thank you again for reading this complaint. I very much hope you will find it possible to use your discretion to cancel the fine in this case."

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 was met by a steward inspecting tickets on the 26th of September 2017 at 08:17 between Amagerbro station and Lufthavnen (airport) station. The complainant had no ticket. As the complainant was not able to present a valid ticket, a fare evasion ticket was issued, according to the travel regulations.

The complainant thus explains in his inquiry to us:

On reaching Nørreport I asked for directions, and was directed to an elevator (near the foodmarket) which took me straight to the platform level. I spent several minutes looking for somewhere to buy a ticket, but could not find any machine, or anyone to ask. I let two metro trains go by but then realised I needed to get a train otherwise I would be late for my flight to London.

The elevator used by the complainant does not stop at the ticket machines. That is clearly informed at the door of the elevator, in both Danish and English.



If the complainant had used the stairs down to the Metro or the other elevator at Nørreport station he would have passed the ticket machines. The two Metro elevators are quite close to each other

and you can easily see both elevators at the same time. See the overview below, which is also located at Nørreport station:



Nørreport station is Copenhagen's busiest station. For that reason, the station is always staffed with uniformed metro personnel, who gladly answer any questions about travel routes, tickets and much more. Therefore, we cannot recognize the complainant's statements that there was no one to ask. In addition to the staff, there are also yellow call points, also on the platform level, which you are welcome to use for guidance. On platform level the call points are situated just next to the elevators. Finally, there are also two 7/11 street-level shops where you can buy tickets and get directions.



Even though we understand that one can be busy and should reach a plane, we do not think it should be excuse not to have a valid ticket before boarding. As the complainant traveled during the rush hour, there was less than 4 minutes between the trains towards the airport.

At Metro, we 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 pensioners, 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. A fare evasion ticket is currently DKK 750 for adults, and is not graduated depending on the reason of the fare evasion ticket. The actual amount is decided by the cooperating transport companies and approved by the relevant authorities.

Considering the above, we maintain our claim on the fare evasion ticket of 750,- kroner."

Klageren anfører hertil:

"I would still like my appeal to be considered. I understand the reasoning given in the letter however I would still ask the board to show leniency, if they are willing to accept that I did my best to find a way to pay the fare. Although information was apparently available I did not see it, and I reaffirm that I could not find anyone official on the platform to ask. I was also unaware of the frequency of trains and felt compelled to catch the soonest one, in order to catch my flight. Having said this I do understand the reasoning, so I am simply asking if the board will recognise that I did try my best, had fully intended to pay, and will certainly make sure I will obtain valid tickets on future visits to Copenhagen. As I mentioned, this was my first ever visit to Copenhagen, and first ever attempt to use the metro - so I made a mistake because of unfamiliarity with the system. I hope the board will take this into account. "

På ankenævnets vegne



Tine Vuust
Nævnensformand