

## AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2018-0001
- Klageren:** XX  
74045 Tärnsjö
- Indklagede:** Metro Service I/S v/Metro Service A/S  
**CVRnummer:** 21 26 38 34
- Klagen vedrører:** Kontrolafgift på 750 kr. grundet manglende forevisning af billet. Klageren gør gældende, at han foreviste en billet som var gyldig
- Parternes krav:** Klageren ønsker kontrolafgiften annulleret eller nedskrevet  
Indklagede fastholder denne
- Ankenævnets sammensætning:** Nævnshoved, landsdommer Tine Vuust  
Niels Martin Madsen  
Torben Steenberg  
Bjarne Lindberg Bak  
Rikke Frøkjær

Ankenævnet for Bus, Tog og Metro har på sit møde den 20. april 2018 truffet følgende

### **AFGØRELSE:**

Metro Service I/S v/Metro Service A/S er berettiget til at opretholde kravet om betaling af kontrolafgiften på 750 kr.

Beløbet skal betales til Metro Service 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](http://www.domstol.dk), [www.advokatsamfundet.dk](http://www.advokatsamfundet.dk) og /eller eget forsikringssselskab om eventuel forsikringsretshjælp.

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### **SAGENS OMSTÆNDIGHEDER:**

Klageren rejste den 26. november 2017 med metroen til lufthavnen. Ifølge klageren havde han en billet til 2 zoner, hvilket han troede var nok, men rejsen krævede en billet til 3 zoner.

På strækningen mellem Amagerbro st. og Lufthavnen st. var der kontrol af klagerens rejsehjemmel, og kl: 16:52 blev han pålagt en kontrolafgift på 750 kr, for ikke at have forevist nogen rejsehjemmel.

Klageren anmodede samme dag Metro Service om at annullere eller nedskrive kontrolafgiften og anførte til støtte herfor som ovenfor, samt at afgiften var for dyr for en studerende, som besøgte København for første gang.

Metro Service fastholdt den 30. november 2017 kontrolafgiften med henvisning til selvbetjeningsprincippet, samt at stewarden som begrundelse for kontrolafgiften havde skrevet, at intet var forevist og efterfølgende over for Metro Service havde udtalt, at klageren ikke fremviste nogen billet.

Efter at sagen er blevet indbragt for ankenævnet har klager tilføjet at kontrolafgiftens størrelse ikke er proportional med overtrædelsens karakter.

### **ANKENÆVNETS BEGRUNDELSE:**

Således som sagen foreligger oplyst, hvorefter stewarden i den elektroniske log under kontrolafgiftens udstedelse som begrundelse for kontrolafgiften anførte, at der intet var forevist samt hans efterfølgende forklaring om, at han altid tager foto af den rejsehjemmel, som passageren måtte have forevist, sammenholdt med klagerens forklaring om, at stewarden skulle have foreslået ham at klage til DSB over kontrolafgiften, er det ankenævnets opfattelse, at klageren ikke på tilstrækkelig vis har godtgjort sin forklaring om, at han foreviste en gyldig 2-zoners billet.

Ankenævnet bemærker, at efterfølgende indsendelse af en upersonlig billet efter ankenævnets praksis i øvrigt ikke ville have medført, at ankenævnet ville anse passageren for at have været i besiddelse af billetten under kontrollen.

Ankenævnet bemærker videre, at i de tilfælde, hvor en passagers rejsehjemmel kontrolleres i en zone, hvor den er gyldig, men hvor passagerens destination ligger uden for gyldighedsområdet, er der ikke hjemmel til at udstede en kontrolafgift, idet passageren efter reglerne om tilkøbsbilletter har mulighed for at tilkøbe zoner inden for sin grundbillets gyldighedsområde.

Som følge af det anførte finder ankenævnet, at kontrolafgiften blev pålagt med rette.

Pligten til at betale kontrolafgift er ikke betinget af, om passageren bevidst har forsøgt at unddrage sig betaling for rejsen, og da rejse på 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, at der hverken efter loven eller rejsereglerne er en forpligtelse for trafikvirksomheden til at nedsætte kontrolafgiften, hvis passageren havde gyldig rejsehjemmel til en del af rejsen. Desuden reguleres kontrolafgifter ikke efter indkomst.

## **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 fælles landsdækkende rejseregler, som trafikvirksomhederne har vedtaget pr. 1. november 2017, fremgår hjemmelen til udstedelse af en kontrolafgift. Det anføres således bl.a., at passagerer, der ikke på forlangende viser gyldig rejsehjemmel, herunder er korrekt checket ind på rejsekort til deres rejse, skal betale en kontrolafgift. Det gælder også, hvis passageren har købt rejsehjemmel via en mobil enhed, der ikke kan kontrolleres, f.eks. hvis denne er løbet tør for strøm eller gået i stykker. Det er passagerens ansvar, at rejsehjemlen er endeligt modtaget på den mobile enhed før påstigning. Som passager uden gyldig rejsehjemmel betragtes også passager, der benytter kort med begrænset tidsgyldighed (f.eks. pensionistkort) uden for kortets gyldighedstid, eller hvis andre rejsetidsbegrænsninger ikke overholdes (f.eks. for hvornår cykler må medtages). Passagerer, der rejser alene på andres rejsekort personligt eller med en anden kundetype, end passageren er berettiget til, rejser uden gyldig rejsehjemmel. Kortindehaveren skal altid selv være checket ind på kortet på de rejser, hvor et rejsekort personligt benyttes. Rejsekortet må endvidere ikke være så slidt/tildækket, at navnet ikke kan læses.

Passagerer, 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 was on my way to the airport. I had a 2-zone ticket when I was riding the Copenhagen Metro when a 3-zone ticket was needed in order to go to the airport. I acted in good faith and believed I bought the right ticket and I'm not making the claim that there shouldn't be a fine, but I believe the fine shouldn't be as large as 750dkk. Another detail that has come to my attention is that I was given the fine in Amagerbro. Is it even possible to fine someone for not having a 3-zone ticket when I was still inside zone 2 when I was fined? The steward I talked to was not very understanding and almost seemed frustrated with me but is it allowed to ticket someone just by their intention to go to the airport? When I appealed to Metro Kundservice they told me that the steward who gave me the ticket couldn't verify that I presented him with a ticket at all, which is a contradiction, but still untrue. I would've payed the ticket when my appeal to Metro Kundservice got rejected but given the fact that it was rejected under the belief that I had no ticket at all, together

with the lack of kind treatment from that same very steward, I took the decision to take this appeal further.”

### **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](http://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 26<sup>th</sup> of November 2017 at 16:52 between Amagerbro station and Lufthavnen station  
In this case, the complainant claims that he had a 2-zone ticket, which he showed to the steward. While the steward claims that the complainant had no ticket at all and therefore received a fare evasion ticket.

When a steward issues a fare evasion ticket, he/she simultaneously records all information into a PDA. Thus all information such as location, time, cause of issue, type of fine, amount, name and address, etc., registered at the time of inspection as well as any photos taken with the PDA.

As we receive the first complaint from the complainant in which he states that he had a 2-zone ticket while the information in the electronic check charge indicates no tickets were presented at all, the case worker immediately sent a request to the steward.  
The steward replied that the complainant did not present any ticket in the control situation. The steward has also explained that if/when he issues a fare evasion ticket to a passenger who has too few zones on a ticket, he (the steward) always takes a photo of the presented ticket with the PDA. There is no photo of any ticket. The photo taken with the PDA shows a picture of the receipt slip.

In his inquiry to Metro, the complainant has not attached any photo of the ticket he informs to have presented in the control situation. On the other hand, the complainant writes that the stew-

ard should have advised him (the complainant) to contact DSB for a cancellation or reduction of the fine.

We must confess that we find it highly unlikely that a Metro steward would issue a fare evasion ticket on an incorrect basis and then recommend the passenger to connect with DSB, which is a completely different transport company.

However, we would like to emphasize that we do not take into consideration the reason for an invalid or missing ticket, but relate exclusively to the facts. And as we attach great importance to the steward's statements, we believe that the facts in this case are that the complainant had no ticket why we maintain our claim for payment of control fee [...] of DKK 750, -

In conclusion we can inform, that a fare evasion ticket is currently DKK 750 for adults, and is not graduated depending on the reason of the fare evasion ticket nor income. The actual amount is decided by the cooperating transport companies and approved by the relevant authorities."

### **Klageren anfører hertil:**

"Regarding my 2-zone ticket, the steward has claimed that I did not present him with a ticket at all. I still adhere to that I did present it and I was fined for not having the 3-zone ticket that was required for my trip to the airport. The steward in question also claims that he always takes photos with the PDA of the presented ticket and all I can state is that this was not case when I was fined. Human errors sometimes occurs.

I've already stated twice that I was 1-zone short for my trip and I've only proceeded with the appeal due to the fact that the steward have claimed I presented no ticket at all. Therefore, I believe my appeal got rejected under false presumptions. Also, I did not attach a photo of the ticket as I didn't believe the steward was acting illegitimate when he gave me a ticket, which I clearly indicated in my first complaint.

In the reply, [...] also allege that I, the complainant, have stated that the steward should have advised me to contact the DSB for a cancellation or reduction of the fine. This is absolutely erroneous as I have never claimed that in any of my comments, which leads me to questions if they have fully grasped my appeal and/or comments. This is evident just by reading my earlier statements.

Given that there's contradictions in the statements between me and the steward, and now the apparent misunderstanding of parts of my earlier statements, I still maintain that my fine should be either reduced or cancelled. I wouldn't have taken the appeal any further if the premises for the decision would have been correct to begin with."

### **Indklagede anfører hertil:**

"We do not understand what the Board of Appeal means by the mail below. The complainant claims in his inquiry to the Metro of November 26, 2017 that our steward recommended him to appeal to DSB. We have already sent a copy of the complainant's inquiry to Metro, but for convenience, we have inserted the text below:

Beskrivelse

26-11-2017 17:57:05 Web : Hello.

I'm currently sitting at Kastrup after being fined 750dkk for not having a 3-zone ticket to Kastrup. I had 2-zone ticket and falsely believed it was the correct type of ticket for the trip to Kastrup. This mistake is entirely on me. I'm a student and I was visiting Copenhagen for the weekend and this amount is not negligible sum for me. The conductor suggested that I should write to DSB as it may be possible for the fine to be withdrawn or reduced, which I and my economy would appreciate deeply.

Kind regards,

Løsning

As already explained, it will never happen that a metro steward would recommend a passenger who received a Metro fare evasion ticket to write to a completely different traffic company.

We have no reason to doubt the steward's statement that the complainant did not show a ticket in the control situation and the complainant has not since shown the ticket he informs to be in possession of. The complainant also states that he lacked a zone and that this mistake was his alone.

If you do not have a ticket, you must accept to receive a fare evasion ticket. The amount of the fare evasion ticket is not graduated according to whether you have had a valid ticket for a part of the journey or in relation to income.

In view of the above, as well as with reference to previously submitted responses, we still maintain our claim for payment of fare evasion ticket no. [...] of DKK 750,-"

På ankenævnets vegne



Tine Vuust  
Nævnensformand