

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2018-0187
- Klageren:** XX
Tyskland
- Indklagede:** Metroselskabet I/S v/Metro Service A/S
CVRnummer: 21 26 38 34
- Klagen vedrører:** Kontrolafgift grundet manglende billet. Klageren og dennes medrejsende købte to billetter i billetautomaten, men medtog kun den ene.
- Parternes krav:** Klageren ønsker kontrolafgiften annulleret, da bankudskrift bekræfter købet, og de tidligere har rejst samlet på én DSB-billet
Indklagede fastholder kontrolafgiften
- Ankenævnets sammensætning:** Nævnensformand, landsdommer Tine Vuust
Rasmus Markussen
Torben Steenberg
Bjarne Lindberg Bak
Helle Berg Johansen

Ankenævnet for Bus, Tog og Metro har på sit møde den 12. december 2018 truffet følgende

FLERTALSAFGØRELSE:

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

Beløbet skal betales 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 forsikrings-selskab om eventuel forsikringsretshjælp.

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SAGENS OMSTÆNDIGHEDER:

Klageren og dennes partner, som er tyskere, havde været på ferie i København i dagene 18.-20. juli 2018.

Det fremgår af klagerens bankkontoudskrift, at de den 18. juli 2018 købte billetter for 72 kr. i en metrobilletautomat i lufthavnen, og senere samme dag i en DSB-automat købte billetter til og fra Ishøj st. I DSB-automater udskrives billetter samlet til det oplyste antal rejsende, i modsætning til billetter fra metros automater, som udskrives separat.

<input checked="" type="checkbox"/>	19.07.18 18.07.18	METROSTATION CPH TERMINALKASTRUP	-9,66 -72,00	EUR DKK
	19.07.18 18.07.18	DSB ISHOJ AUTISHOJ	-16,10 -120,00	EUR DKK
	19.07.18 18.07.18	1,75% für Auslandseinsatz	-0,28	EUR
	19.07.18 18.07.18	DSB NORREPORT AUTKOBENHAVN K	-16,10 -120,00	EUR DKK
	19.07.18 18.07.18	1,75% für Auslandseinsatz	-0,28	EUR

Efter endt ferie skulle de retur mod lufthavnen med metroen den 20. juli 2018.

Ifølge klageren kunne de på Nørreport st. ikke finde nogen billetautomat på metroperronen eller på vej derved. Klagerens partner løb derfor tilbage op til gadeniveau for at finde en automat, da de havde travlt og skulle nå deres fly. Han fandt her en billetautomat men var meget stresset, hvorfor han ikke fik valgt engelsk som sprog, men dansk, og bestilte en billet. Men da han bemærkede, at han ikke havde skullet vælge antal, som ved tidligere køb, valgte han at købe en yderligere billet i samme session og fortsatte til betaling, i alt 72 kr. Han skyndte sig derefter ned til metroperronen efter at have medtaget en billet, som han troede gjaldt dem begge, som ved tidligere rejser, og en kvittering fra automaten.

Klageren har fremlagt bankudskrift fra billetkøbet, som skete i en DSB-automat på Nørreport st.:

23.07.18	DSB NORREPORT AUTKOBENHAVN K	-9,67	EUR
20.07.18		-72,00	DKK

På strækningen mellem Kastrup st. og Lufthavnen st. blev klageren i metroen ved kontrol kl. 16:15 pålagt en kontrolafgift på 750 kr., fordi de kun kunne forevise én billet og en kvittering fra en tidligere kundes køb af billetter til 116 kr. Disse så således ud:



Klageren anmodede den 4. august 2018 Metro Service om at annullere kontrolafgiften og forklarede forløbet samt vedhæftede kopi af sin bankudskrift.

Metro Service fastholdt den 6. august 2018 kontrolafgiften med henvisning til selvbetjeningsprincippet, samt at billetter er upersonlige og efterfølgende visning ikke kan accepteres, hvorfor forevisning af kvittering eller bankudskrift heller ikke kan føre til annullering af kontrolafgiften.

ANKENÆVNETS BEGRUNDELSE:

3 medlemmer (Tine Vuust, Bjarne Lindberg Bak og Helle Berg Johansen) udtaler:

Klageren kunne ved kontrollen i metroen den 20. juli 2018 ikke forevise gyldig rejsehjemmel, og kontrolafgiften blev dermed pålagt med rette.

Ifølge selvbetjeningsprincippet er det passagerens eget ansvar under hele rejsen at kunne forevise gyldig rejsehjemmel og ved modtagelsen af rejsehjemmelen at sikre sig, at det udleverede svarer til et ønskede.

Klageren har oplyst, at partneren grundet travlhed ikke valgte engelsk som sprog på billetautomaten, og det beroede derfor på hans eget forhold, at købsflow'et og billetten var på dansk. Hertil kommer at partneren undlod at se nærmere på billetten, idet han antog, at den gjaldt for to rejsende. Hvis han imidlertid havde set på de to slipper, ville det være åbenbart for ham, at der var

påtrykt beløbet 36 kr. på den ene slip og 116 kr. på den anden slip, og at de i øvrigt ikke var identiske, hvorfor de hverken kunne være to billetter á 36 kr. eller én billet á 72 kr. og en kvittering herfor.

Upersonlige billetter er kun gyldige for ihændeberen på kontroltidspunktet, hvorfor efterfølgende indsendelse af bankudskrift efter nævnets faste praksis ikke kan medtages i bedømmelsen af, om passageren var i besiddelse af gyldig rejsehjemmel ved kontrollen.

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 oplagt mulighed for omgåelse af reglerne om at betale for rejsen, hvis det accepteres, at en kvittering eller bankudskrift kan betragtes som en billet, er det vores opfattelse, at der ikke har foreligget sådanne særlig omstændigheder, at klageren skal fritages for kontrolafgiften.

2 medlemmer (Torben Steenberg og Rasmus Markussen) udtaler:

Indledningsvist bemærker vi, at metroens billetautomater udsteder hver enkelt billet separat, hvorimod DSB-automater kan udstede billetter til flere rejsende samlet på én billet, hvis man taster to eller flere rejsende ved bestillingen.

Klageren har oplyst, at partneren grundet travlhed ikke valgte engelsk som sprog på billetautomaten, og det beroede derfor på hans eget forhold, at købsflow'et og billetten var på dansk. Hertil kommer at partneren undlod at se nærmere på billetten, idet han antog, at den gjaldt for to rejsende.

Kontrolafgiften for manglende billet til klageren, blev derfor pålagt korrekt i metroen.

Imidlertid finder vi, at Metro Service ikke burde have fastholdt kontrolafgiften efter klagerens anmodning om annullering af denne.

Vi har ved afgørelsen heraf lagt vægt på, at således som sagen foreligger oplyst med klagerens indsendelse af kontoudskrift, der viser, at de under deres ophold i København både købte billetter i en metroautomat, som udsteder billetter separat, og i en DSB-automat, som ifølge det oplyste udstedte billetterne til Ishøj samlet, var det undskyldeligt, at klageren befandt sig i den vildfarelse, at de med de to slipper havde gyldig rejsehjemmel, inden de steg om bord på metroen mod lufthavnen den 20. juli 2018. Vi finder, at de forskellige billetter er medvirkende til at forvirre passagerne i den kollektive trafik i København - særligt turister, som ikke kender til, at der er forskel på DSB og Metroselskabet og deres billetautomater.

På baggrund af den indsendte kontoudskrift, lægger vi til grund, at de betalte for to billetter, og at der i denne helt konkrete situation ikke var tale om, at de var flere end disse to rejsende, hvorfor kravet om at betale for alle rejsende anses for opfyldt.

Metro Service skal herefter under disse helt særlige omstændigheder frafalde kontrolafgiften, men da dette kan være en praksisændring, skal Metro Service ikke betale 10.000 kr. for tabt sag i ankenævnet."

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 fælles landsdækkende rejseregler, som trafikvirksomhederne har vedtaget pr. 1. marts 2018 og opdateret 1. november 2018, fremgår hjemmelen til udstedelse af en kontrolafgift. Det anføres således bl.a., at passagerer, der ikke på forlangende viser gyldig rejsehjemmel, skal betale en kontrolafgift på 750 kr. for voksne.

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører følgende:

"I'd like to file a complaint against a fare evasion ticket that I feel is undue. We were leaving Copenhagen with my partner after a 2-day visit. We entered Nørrebro station from Nørrebrogade to go to the airport. Arriving at the metro downstairs we realised that there was no ticket machine anywhere on the way or down here, everything being adapted for the new contactless card. We start to panic as we don't have much time left to be on time for the flight. My partner, owner of the credit card we use for the whole trip, goes looking for a machine. He has to go all the way up to the surface, in a hurry, through many corridors, with the fear not to find his way back, to the surface to finally find the only physical vending machine. There is a queue of course, which makes him even more nervous. He goes through the process of buying a ticket, in the Danish language, because he's in a hurry, and people behind are also waiting. At the end of the process, he noticed he didn't choose the number of travellers as usual, so he chooses to buy another ticket in the same session. The second process finished, he proceeds to payment. A ticket is issued (that he assumes is for 2 people, like all the other tickets he bought during the trip) that he grabs as quick as possible because the queue is quite pressuring, and the flight time is getting dangerously close. He manages to find me after a few trials and we pray to make it on time to the flight. We are not annoyed to be controlled when arriving at the airport, as we believe in good faith to be in order. But my partner is surprised, almost shocked when he is said that the ticket he presents is valid for only one person! After shortly trying to discuss the fact, unable to understand what went on, we decide to accept the fare evasion ticket, as the controller is not very receptive to our arguments of good faith (why would we want to save on one ticket of about 5€ at the very end of the trip, when we have been good citizens, and paid all trips until then? Just to take the risk to lose 100€ after all went well?!??) and we don't have much time to discuss if we want to catch the flight. We are sorry it took us so much time to file this complaint, we are both very busy with work and travels at the moment. It took some time too to figure out what happened. I think the bad manipulation of the vending machine of my partner under stress made that he bought 2 tickets, instead of one ticket for two people as usual. Unaware of the difference, and in a hurry, he didn't realise there was probably another ticket being issued. Could that be possible? We actually checked the bank statement of his card, and the payment was actually of 72 DKK, as for the other trips we had together. We attach you here the bank statements of our whole trip in Copenhagen, so you can see that we used this card for every other trip that we did in full legality. If you think this is not enough as a proof, we would be happy to show that we were actually travelling together (flight tickets), and that we are living together (rental contract). I hope you will understand the conditions of this silly misfortune and accept to withdraw the ticket. Best regards."

I understand the general policy of the company, that states that a bank statement is not enough of a

proof given the fare system.

however, by giving a fully detailed account of the situation and the events, and by proposing to present a body of evidence that completely eliminates the doubt of a misdemeanour, i feel that my rights haven't been respected.

i don't really see the function of a reclamation process, if the elements of evidence are systematically ruled out without consideration for their specificity.

i expect, as in front of a court, a specific and personalised examination of all evidences and explanation to rule the final decision.

and i think that in this case, there is no doubt that the fare had been actually bought, and that the fare evasion ticket is undue.

as material evidence, i am providing you further evidences of my honesty: the proof of bike rentals for me and my partner that ended a couple of hours in the area of norrebro before taking the metro to reach the airport, the bank statement showing that 2 tickets were bought in norreport afterwards, and finally the plane tickets for me and my partner, showing that we were leaving the country at that moment together.

if these are not definite proof that my partner actually bought myself a ticket and simply forgot it in the machine - by lack of knowledge of a foreign system, and hurried panick caused by the same system making difficult for foreigners without the digital or magnetic systems mostly reserved for locals or people staying for a longer term - i think that these are reasonable elements for a jury to evaluate in good faith that a fare ticket was actually bought.

i'd like also to add as in any crime judgement, the total lack of a motive for the delictuous act.

what would be the interest of 2 people travelling together, that have previously honestly paid all of their fare (see bank statement), to have ONLY 1 of them travelling without a ticket, and this just before leaving the country? what is the interest? to avoid paying 4 euros, with the risk of paying 100 if they are caught? when they already paid all their fare honestly?

i really hope that my case is understandable and defensible.

i of course apologise to have given that extra work to the controlling agent, the company reclamation system, and now your board, but i sincerely think that the little mistake that happened in all good faith and innocence cannot justify to pay such a huge sum.

i have much respect for all public transport and services all around the world, and am travelling a lot, due to my work and leisure. i always try to comply to the local rules. i am very sorry if me and my partner have unknowingly failed to do it this time.

i would greatly appreciate that you take in account all details of this story, and appreciate the honesty that was mine while travelling, and still is mine in writing to you now.

i'm sure you will then consider like i do that this fare evasion ticket is unfounded and undue.

And i will be much grateful to keep the good image of metro service as a serious, as well as humane, company."

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 <https://dinoffentligetransport.dk/media/2561/faelles-landsdaekkende-rejseregler.pdf> as well as on our information boards which are placed at every station. The information boards contain travel information in both English and Danish.



Kontrolafgift

Penalty fares

Husk, at det er dit ansvar inden påstigning at have gyldig billet eller gyldigt kort til rejsen for både dig og dine eventuelle ledsagere.

Manglende billet eller kort samt rejse i spærretiden for dem, der rejser på pensionistkort eller med cykel, medfører en kontrolafgift, og videre rejse med cykel i spærretiden er ikke tilladt. Spærretid for cykler er alle hverdage kl. 7-9 og kl. 15:30-17:30 undtagen i juni, juli og august. For pensionistkort er spærretiden alle hverdage kl. 7-9.

Vi henviser til www.dinoffentligetransport.dk samt rejse-reglerne for gældende satser på kontrolafgifter og yderligere information.

Remember that you are responsible for ensuring that you have a valid ticket or valid card for the trip before boarding, both for you and any accompanying travellers. A penalty fare will be charged for travelling without a valid ticket or card.

A penalty fare will also be charged for travel using a pensioner pass outside of the valid hours and for travelling with a bicycle outside of the permitted hours – please note that continued travel with a bicycle during these hours will not be permitted. Travel with bicycles is not permitted on weekdays between the hours of 7:00 am - 9:00am and 3:30pm - 5:30pm, except in the months of June, July and August. Pensioner passes cannot be used for travel on weekdays between the hours of 7:00am - 9:00am.

Please refer to www.dinoffentligetransport.dk and the travel rules for the applicable penalty fares and additional information.

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 complainants partner allegedly bought two tickets, but took only one of them from the ticket vending machine before entering the metro. When met by a steward inspecting tickets on the 20th of July 2018 at 16:15 between Kastrup station and Lufthavnen station the two companions presented only one ticket for the two of them, together with a receipt of DKK 116,-. As the complainant was not able to present a valid ticket, a fare evasion ticket was issued, according to the travel regulations.

As the metro and the other public transportation companies in Copenhagen are operating as an open system it is always the passengers own responsibility to make sure that a valid ticket can be presented at any time if

asked for. If the complainant's partner had checked the ticket and the receipt he took from the vending machine he would immediately have seen that the ticket only was valid for 1 person and that the amount DKK 36,- did not correspond with the other piece of paper from the vending machine which was a receipt of 116 kroner and with a time stamp one minute before the complainant's partner made his purchase.

A ticket is not personalized with a name or a photograph of the ticket holder and is therefore only valid for the holder at the time of inspection, subsequent presentation is not accepted and for the same reason nor a bank statement can be accepted.

The fact that the complainant can show a receipt for renting a bicycle and airline tickets is not relevant to the case. The complainant also informs that the couple, during their stay in Copenhagen, have bought a ticket for all their travels. By reading the enclosed bank statement, we can see that purchases have been made in both DSBs and Metros vending machines. However, as you must be able to show valid ticket by control, previous ticket purchases cannot be considered.

The complainant informs that the couple entered Nørreport station from Nørrebrogade and that they did not encounter any ticket vending machines on their way through the station, but only card readers to contactless cards (we assume the complainant means Rejsekort). That they were panicking because their flight departure was getting dangerously close and that the complainant's partner, even though he was afraid not to find back to his partner, went all the way up to the surface to find a ticket machine.

We are a bit unsure of what way the couple entered Nørreport station as Nørrebrogade is located most of a kilometer away. However, no matter which route you arrive at Nørreport station, you will pass several ticket vending machines, from both DSB and Metro, as well as you can buy tickets and get directions at the 7 / Eleven store.

Nørreport station is the most busy station in Copenhagen and for the same reason we have uniformed staff present at the station every day between kl. 07-20, who can help and guide if needed.

Even if we can understand that you can be busy and become stressed and panicked because you are running late to catch a flight, we do not think it may be excuse not to make sure you have a valid ticket before boarding the train.

We must emphasize that we do not distinguish between an intentional or unintentional mistake, nor do we consider passengers without a valid ticket as criminals. We relate exclusively to the facts. Fact in this case is that the complainant did not have valid ticket when inspected why we maintain our claim on the fare evasion ticket no. [...] of DKK 750,-"

Klageren anfører hertil:

"I am really stocked by the amount of bad will that you show in your answer, when everything we are presenting is just showing our good faith.

Are you just robots?

The bank statement is clearly showing that we bought the ticket.

Yes there was panic, and please understand that we are foreigners and not completely aware of your system.

(Oh, and i made a mistake about entering the metro at Nørrebrogade. Sorry. Not my city. Not my country. Maybe was Frederiksborggade. But you don't care. And i was panicked anyway.)

I am very disappointed, and sad to realise how stiff and narrow-minded you are.

What is the point of having a complaint system, if you just drop all of our grounded explanations by just referring to the dumb rule that "you have to show your ticket".

I know we didn't present the ticket, but EVERYTHING IS CLEARLY PROVING that we bought it and thus were travelling legally!

I thought I was talking to human beings, and that they could reasonably evaluate the situation, and see that WE ARE NOT CRIMINALS.

Can you answer this simple question:

WHY WOULD WE NOT PAY ONE TICKET ON A TWO PEOPLE TRIP TO THE AIRPORT TO LEAVE THE COUNTRY; WHEN WE PAID EVERY SINGLE TRIP WE MADE DURING OUR STAY?

TO SAVE 4 EUROS?????????????

If you are not dropping the charges we are going to look if there is some european court appeal possible about this clear abuse of power.

This makes me sick.

I travel the world, and I never encountered such a stubborn attitude.

I hope you will be re-evaluating the case.

If not, rest assured that we will do everything not to pay this racketeering!

We had such a great time in Danemark, and did everything right for Danemark to like us too.

I feel sad and desperate that someone is not believing us.

Be humane for once!"

På ankenævnets vegne



Tine Vuust
Nævnensformand