

## AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2019-0280
- Klageren:** XX på egne vegne og på vegne af sin ægtefælle YY  
Nederlandene
- Indklagede:** Metroselskabet I/S v/Metro Service A/S  
**CVRnummer:** 31386569
- Klagen vedrører:** To kontrolafgifter på hver 750 kr. grundet manglende registrering af check ind på rejsekort. Den ene kontrolafgift er efterfølgende pr. kulance nedsat til 125 kr.
- Parternes krav:** Klageren ønsker, at ankenævnet annullerer kontrolafgifterne og gør gældende, at de ved en fejl troede, at de opgraderede rejsekortet til 2 voksne i en rejsekortautomat og checkede ind
- Ankenævnets sammensætning:** Indklagede fastholder kontrolafgifterne på i alt 875 kr.  
Nævnensformand, landsdommer Tine Vuust  
Rasmus Markussen  
Torben Steenberg  
Asra Stinus  
Helle Berg Johansen

Ankenævnet for Bus, Tog og Metro har på sit møde den 19. februar 2020 truffet følgende

### **AFGØRELSE:**

Metro Service er berettiget til at opretholde 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 fx på [www.domstol.dk](http://www.domstol.dk), [www.advokatnoeglen.dk](http://www.advokatnoeglen.dk) og /eller eget forsikringssselskab om eventuel forsikringsretshjælp.

## SAGENS OMSTÆNDIGHEDER:

Klagernes søn bor i Danmark, hvor de var på ferie for at besøge ham. Han havde lånt dem et rejsekort anonymt, som de skulle benytte ved rejse med Metroen den 16. november 2019 fra Islands Brygge til Kongens Nytorv.

Klagerne har oplyst, at de gik til rejsekortautomaten på stationen, hvor de opgraderede rejsekortet til 2 voksne, og at de troede, at de herefter var checket ind, fordi de ikke fik nogen advarsel eller information om "error".

Ved en efterfølgende kontrol i Metroen blev de pålagt hver en kontrolafgift på 750 kr., fordi der ikke var registreret noget check ind på rejsekortet. Stewarden steg af sammen med dem og viste dem, hvordan man anvender ekstra check ind-standeren med + tasten.

De indgav herefter klage til Metro Service og anmodede dem om at annullere kontrolafgifterne, da de havde været i god tro og ikke ville snyde med betaling for rejsen, og at fejlen skyldtes manglende information på stationen om, hvordan man skulle checke flere rejsende ind.

Metro Service nedskrev den ene kontrolafgift til 125 kr. pr. kulance og oplyste, at stewards ikke kan tage hensyn til god eller ond tro, samt at det er passagerens eget ansvar at være i besiddelse af gyldig rejsehjemmel.

Under den efterfølgende klage til ankenævnet gjorde klagerne gældende, at de på rejsekortautomaten havde opgraderet rejsekortet til 2 voksne og havde checket ind, hvorfor automaten måtte have været fejlbehæftet ved ikke at have registreret deres indcheckning.

Metro Service har over for ankenævnet fremlagt logs fra automaten, som havde 18 check ind i perioden mellem kl. 11:30 og 12:30 og rejsekortstanderen, som havde 84. Ifølge rejsekorthistorikken har rejsekortet været i brug før og efter kontrollen:

09-11-2019 21:57:30	10-11-2019 01:58:46	01-11-2019	Check ind	Check ind
09-11-2019 21:57:36	10-11-2019 01:58:46	01-11-2019	Check ud	Check ud
16-11-2019 12:27:20	17-11-2019 06:18:13	01-11-2019	Kontrolmærke	Kontrol
16-11-2019 12:27:38	17-11-2019 06:18:13	01-11-2019	Kontrolmærke	Kontrol
16-11-2019 12:27:52	17-11-2019 06:18:13	01-11-2019	Kontrolmærke	Kontrol
16-11-2019 12:28:36	17-11-2019 06:18:13	01-11-2019	Kontrolmærke	Kontrol
16-11-2019 12:41:05	16-11-2019 12:51:46	01-11-2019	Check ind	Check ind
16-11-2019 12:41:05	16-11-2019 12:51:46	01-11-2019	Check ind	Check ind
16-11-2019 12:48:29	16-11-2019 13:11:37	01-11-2019	Check ud	Check ud
16-11-2019 15:39:23	16-11-2019 15:46:13	01-11-2019	Check ind	Check ind
16-11-2019 15:39:23	16-11-2019 15:46:13	01-11-2019	Check ind	Check ind
16-11-2019 15:51:37	16-11-2019 16:10:58	01-11-2019	Check ud	Check ud

Hertil har klagerne svaret, at kontrolafgifternes størrelse ikke står i forhold til forseelsen, og at de gerne vil betale prisen for rejserne.

### **ANKENÆVNETS BEGRUNDELSE:**

Ankenævnet har fra Metro Service modtaget oplysninger fra Back Office om denne sags konkrete rejse, som bekræfter oplysningerne på rejsekortet om, at der ikke var checket ind.

Sammenholdt med logs fra rejsekortautomaten og check ind-standeren, har ankenævnet ikke grundlag for at konstatere, at klagerne havde checket korrekt ind på den pågældende rejse, hvor kontrollen foregik.

Det fremgår af rejsekort rejseregler, at rejsekort skal checkes ind ved rejsens begyndelse, og at det er passagerens eget ansvar at være checket korrekt ind.

Kontrolafgifterne for manglende check ind blev derfor pålagt med rette.

Dette er et område med stor mulighed for omgåelse af passagerens pligt til at sørge for betaling af sin rejse, hvis det accepteres, at der er checket ind på rejsekortet, uanset at dette ikke er registreret på kortet eller i Back Office. Ankenævnet finder, at informationen om check ind af flere rejsende på engelsk på såvel standeren som i automaten er tilstrækkeligt tydelige.

Ankenævnet bemærker, at det ikke er en betingelse for at pålægge en kontrolafgift at passageren bevidst har forsøgt at unddrage sig betaling for rejsen.

Herefter har der ikke foreligget sådanne særlige omstændigheder, at kontrolafgifterne skal frafaldes.

### **RETSGRUNDLAG:**

Af § 14 stk. 1 i lov om ændring af lov om trafikselskaber og jernbaneloven, fremgår jernbanevirksomhedernes adgang til at opkræve kontrolafgift og ekspeditionsgebyr for passagerer, der ikke foreviser gyldig rejsehjemmel (billetter og kort).

I de fælles landsdækkende rejseregler, som trafikvirksomhederne har vedtaget, præciseres hjemmelen til at udstede 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 på 750 kr. for voksne.

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

#### **Klageren anfører følgende:**

On November 16th at 12.15 hr, my wife and I, aged 69 resp. 66 years, and visiting Copenhagen for the first time, used the Rejsekort of our son (who is living in Copenhagen and whom we went to

visit) for a trip with the Copenhagen Metro, from station Islands Brygge to station Kongens Nytorv. We were instructed to upgrade our Rejsekort to two adults at the Rejsekort vending machine. So we selected '2 adults', and checked in. The machine did not display any warning or error message, and thus we proceeded to our destination under the impression we had checked in properly for two adults, all was well.

However, upon approaching the final stop, we were surprised to hear from the ticket inspector that upon inspection the check-in appeared in fact to have been unsuccessful. Although we explained to her what actions we had taken to check in she told us she was nevertheless obliged to write us a (very considerable) fine. At the same time however she was very helpful in leaving the train together with us at our station of destination to show us on the platform how we in fact would have had to proceed in order to do the check-in properly: at the only check-in pole on the platform (around the corner) which has the '+ menu' on top of it. Our offer to buy a single fare right then and there was not an option according to the inspector. She did advise us to appeal the fine however, which brings us to you today.

After receiving the fine, our son went back to Islands Brygge station (as we already were on our way back home because our visit to Copenhagen had ended) and double-checked: the Rejsekort vending machine did not show any error message upon checking in for two persons, and checking out for two persons at the check-out pole was no problem.

Although we are no technicians, the sequence of events and the double-checking of our son do lead us to conclude that the vending machine check-in sensor may sometimes misfire, without a warning message being displayed.

Moreover, the information we got from the ticket inspector as how to make a proper two person check-in is nowhere to be found, neither on the platform of the metro station itself nor on the internet site of the metro ([www.metrosevice.dk](http://www.metrosevice.dk)) or in the Rejseplan-app.

Based on the above: the lacking of the correct information both in the metro itself and on the internet, together with a not at all times properly functioning ticket vending machine I would appreciate a review of our fine. A cancellation of the full amount of the fine or a reduction to the nominal fare price would seem more appropriate to us.

We are sorry to say we were rather astonished and displeased with the in our view unfair and arbitrary reaction from Metro Customer Service on our complaint, a copy of which is enclosed hereunder on pg 2 (in *italics*). In no way whatsoever is taken into account the essence of our complaint, being the inaccessibility of the correct information necessary for a proper two-person check-in.”

### **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 travel document on demand to the ticket inspectors.

In cases where passengers are not able to present a valid travel document, 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) and on Din Offentlige Transport -<https://dinoffentligetransport.dk/kundeservice/raad-og-regler/alle-rejseregler/> 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 travel document. They do not distinguish between an intentional or unintentional mistake. They only check the validity of the travel document. 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 and his wife was met by a steward inspecting tickets on the 16<sup>th</sup> of November 2019 at app. 12:35 between Islands Brygge station and Kongens Nytorv station. The couple presented a rejsekort of the type anonymously to the steward, but since there was no check in on the rejsekort, the steward issued a fare evasion ticket for each of the persons in accordance with current rules.

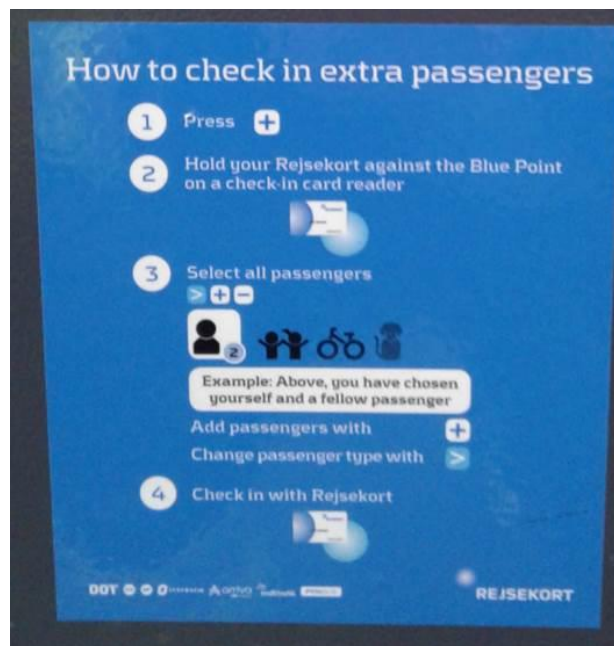
The couple have each filed a complaint about the fare evasion tickets, explaining that they had borrowed the travel card from their son, who lives in Denmark and who they visited for the first time, that they are older people, that they did not know how to carry on check in correctly and that there was no guidance at Islands Brygge station and that they believe that the missing check-in may be due to equipment failure.

When a rejsekort is held in front of a card reader, an electronic mark is placed on the card's chip. Such a mark is not found on the rejsekort in question. In the attached transcript from Rejsekort A/S "travel history", you can see that the travel card was checked out in a bus on November 9 and that the next registration on the card is the steward's check marks.

At Islands Brygge station there are 2 options for group check-in. Either the check-in-extra card reader which is located right next to the elevator, or the rejsekort machine itself, see the photos below:



The check-in-extra card reader has instructions in both Danish and English on how to check in more than 1 traveler. See a close-up of the guides below:





If you use the Rejsekort Machine, you get step-by-step instructions on the screen. See attached image series (CIE-RVM.pdf).

We asked Rejsekort A/S to investigate if there was any fault in the equipment at Islands Brygge station that day and time, but everything worked perfectly.

During the period 11:30 to 12:30, 84 transactions were made on the check-in-extra card reader and 18 on the Rejsekort machine. And since the rejsekort itself has been used subsequently it must be concluded that the card is also intact.

We have attached a PDF file with the equipment history.

Every kind of information about the metro and how to get a valid travel document before boarding is available at all stations in both Danish and English and if you use one of the yellow call points you will be able to get help and guidance from a living person, around the clock, in Danish or English.

There is no doubt that the responsibility for having a valid ticket before boarding the metro applies to everyone, whether you are a resident, tourist, child, adult, student or senior citizen. If you cannot present a valid ticket or card at control, you have to accept having to pay a fare evasion ticket.

At Metro, we would like to provide good service and we have therefore, out of sheer kindness, offered the couple to reduce one fare evasion ticket to DKK 125 - while maintaining the full amount of the other fine.

But we must emphasize that the reduction is absolute ex gratia.

We believe it has been proven that the equipment worked flawlessly, and since there are plenty of options to either read how to check in correctly or, if you prefer, to get guidance from someone in the control room via a yellow call point, we are off conviction that the failure to check-in is the complainants own responsibility.

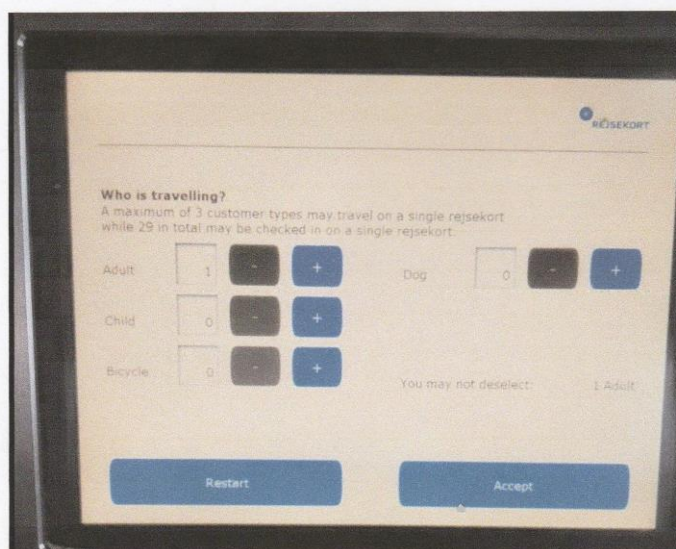
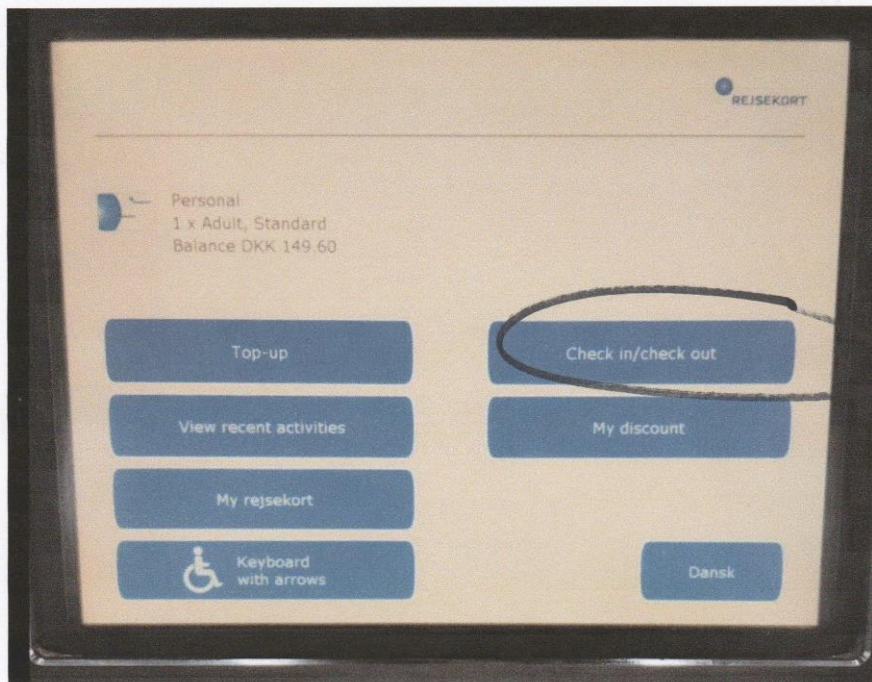
With reference to the above, we therefore uphold our claim for payment of fare evasion ticket 00832986 of DKK 750 and fare evasion ticket 00832987 which has been reduced to DKK 125, in total DKK 875, -."

### **Hertil har klagerne svaret:**

"We have studied the information which we received in the reply from Metro Service, and we appreciate the thoroughness of the information offered to us. It enables us to illustrate (see the attached picture to this message: 'photo display vending machine') at which point our attempt for checking-in apparently did fail: after pushing the button 'Check in/ check out' we did not get into the next menu with the required options. We cannot recall if any other display was shown on the machine. Therefore we had the conviction at that moment we had checked in properly, which was not the case, apparently.

From the information we received from Metro Services we have to conclude that the failed check-in was our fault, because the vending machine has been proven to be in order.

We are, however, still of the opinion that the fine we received, even the 'ex gratia' fine from Metro Service at second instance, is rather disproportionate to the 'offense' we have made. We did not deliberately try to evade paying for our trip by not checking in, being informed about the ins and outs of the Danish public transport system, but have tried to do our best in making our way in a Metro system that was new to us as tourists who visit a foreign city for the first time. "



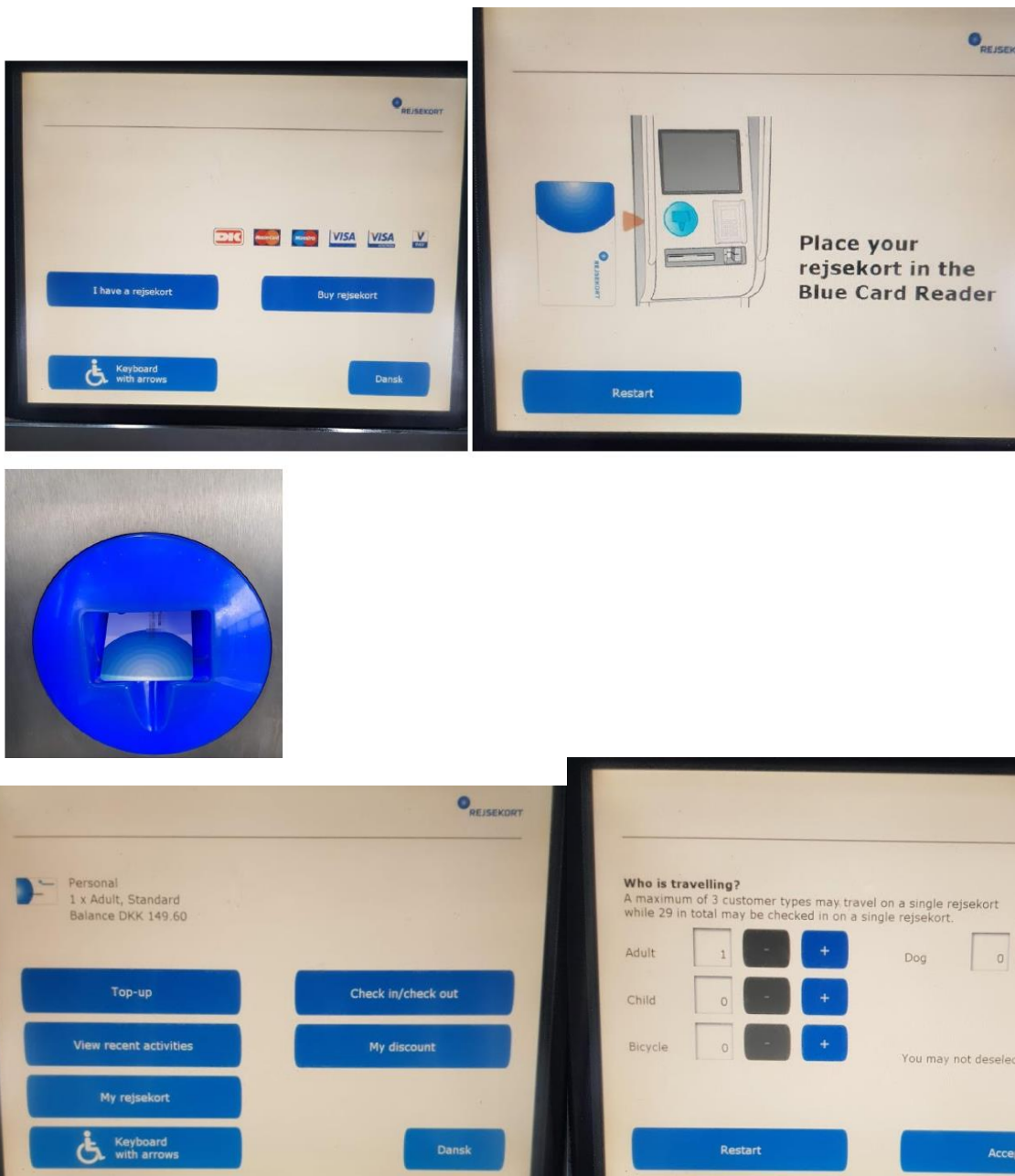
Hertil har Metro Service anført:

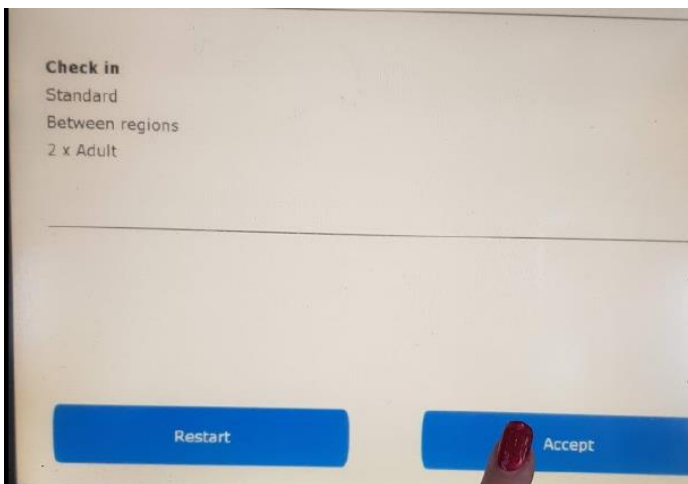
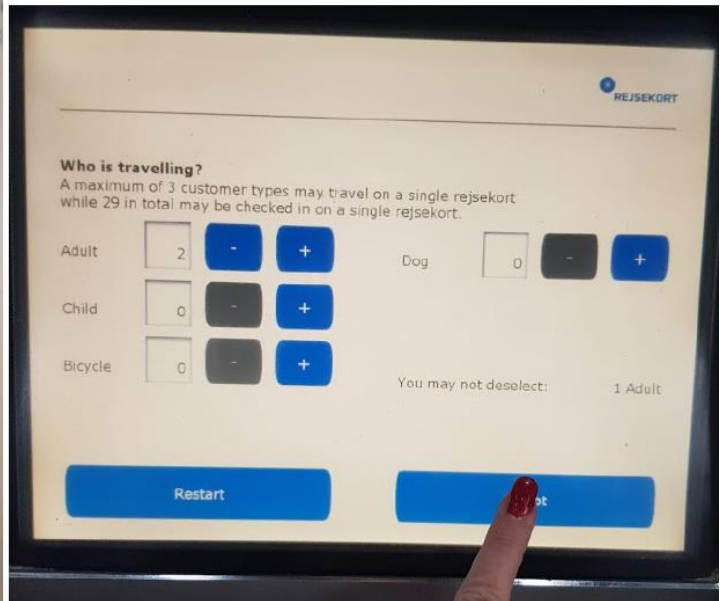
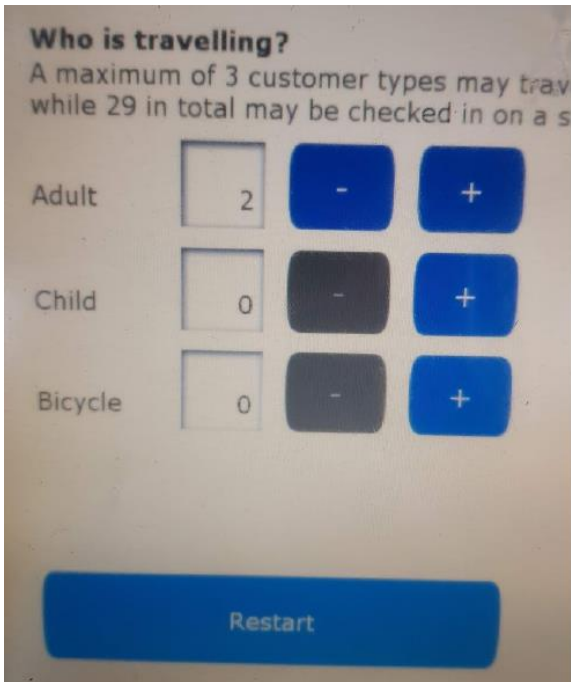


“We have read the complainants’ latest comments and we understand that it was certainly not the complainants’ intention to travel without valid tickets.

But the requirement for a valid ticket applies to everyone; whether child or adult, student or senior citizen, resident or tourist. The actual amount for a fare evasion ticket for an adult amounts to DKK 750. The amount is settled in collaboration between the carriers and the relevant authorities and is not graduated in relation to the reason for the missing valid ticket.

We have already offered a substantial write-down of the total amount, and we therefore maintain the current claim of DKK 875,-.





På ankenævnets vegne

Tine Vuust  
Nævnetsformand