

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer: 2014-0032

Klageren: XX
2000 Frederiksberg

Indklagede: Metroselskabet I/S v/Metro Service A/S
21 26 38 34

CVRnummer:

Klagen vedrører: Kontrolafgift på 750 kr. for manglende rejsehjemmel i metroen. Klageren modtog ikke SMS-billet på sin telefon før påstigning.

Ankenævnets sammensætning: Nævnensformand, landsdommer Tine Vuust
Bjarne Lindberg Bak (2 stemmer)
Asta Ostrowski
Torben Steenberg

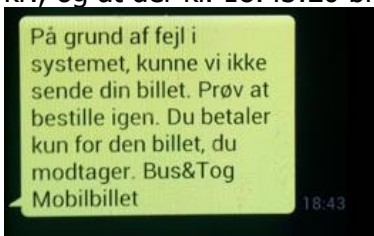
SAGSFREMSTILLING:

Klageren reklameret til indklagede: 23. november 2013.

Klagegebyr modtaget i ankenævnet: 16. januar 2014.

Sagens omstændigheder: Klageren skulle den 12. november 2013 rejse med metroen fra Luft-havnen st. og ville som rejsehjemmel anvende en mobilbillet købt via mobilbilletter applikationen 1415 Hovedstaden.

Der er givet divergerende oplysninger fra klageren og Metro Service om det passerede. Men det fremgår af sagsakterne, at klageren kl. 18:43:20 bestilte en mobilbillet fra zone 04 i 4 zoner til 48 kr., og at der kl. 18:43:20 blev leveret en besked til hendes mobiltelefon med følgende ordlyd:



Klageren har derudover anført, at hun modtog et billede af en billet, men med teksten henover "udløbet". Dette eksakte skærm-dump fra telefonen er ikke fremlagt i sagen.

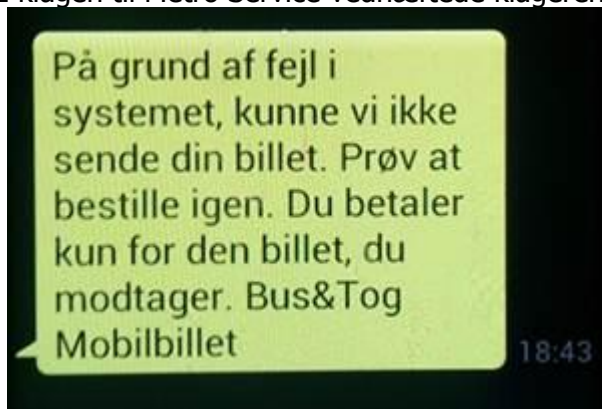
Metro Service har fremlagt den elektroniske kontrolafgift på 750 kr., som er påbegyndt udstedt kl. 18:50:00 og afsluttet/sendt til Back Office kl. 19:11:59. I en note på kontrolafgiften har stewarden anført følgende:”

<Note>pax hade ikke billet fra cph jeg bileter pax kommer til mig med sin mobil og se til mig at hun skal købe billet nu jeg se til pax at det er førsent vis du ikke har billet skriver jeg en kontroafgift til dig pax påstod at hun er turist </Note>

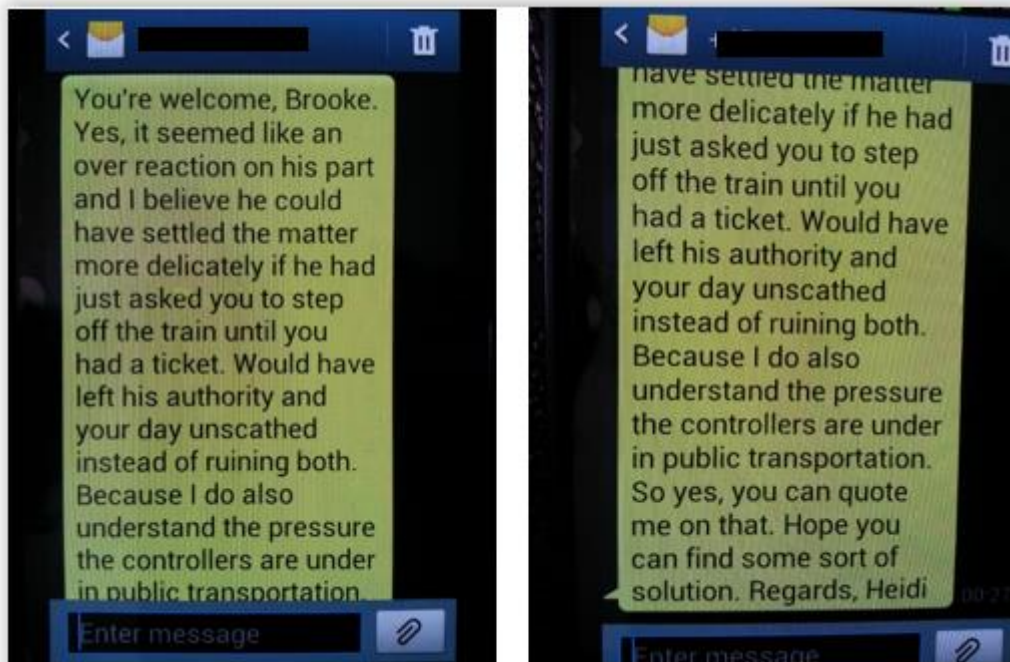
Klageren anmodede den 23. november Metro Service om annullering af kontrolafgiften og gjorde følgende gældende:

I was fined when the Mobilbilleter application malfunctioned (see attached confirmation), and the Metro officer I asked for help prevented me from getting off the train to solve the problem—even though the train remained stopped at the airport station where I boarded, and the doors were open. The Metro officer closed the doors with his hands to prevent me from leaving. Several passengers protested his treatment of me (see eyewitness account in attached document), because it was so unjust.

I klagen til Metro Service vedhæftede klageren applikationens fejlmeddelelse:



Klageren vedhæftede desuden en sms fra et vidne:



Metro Service fastholdt ved brev af 19. december 2013 kontrolafgiften med henvisning til selvbetjeningsprincippet og rejsereglerne for SMS-billetter, som angiver, at billetten skal være modtaget på telefonen inden påstigning. Endvidere gjorde Metro Service gældende, at man havde konstateret, at klageren var blevet oplyst med en infobesked om, at billetten ikke kunne sendes til hendes telefon.

Det fremgår af udskriften fra Unwire, som leverer mobilbilletter, at baggrunden for, at billetten ikke kunne leveres, var at prisen på 48 kr. var højere end klagerens teleudbyder tillod.

12. november 2013, 18:43:20	Info besked sendt	→	På grund af fejl i systemet, kunne vi ikke sende din billet. Prøv at bestille igen. Du betaler kun for den billet, du modtager. Bus&Tog Mobilbillet
12. november 2013, 18:43:20	Billetten er Annulleret: Billetten koster mere end din udbyder tillader	→	
12. november 2013, 18:43:32	Info besked modtaget	→	

PARTERNES KRAV OG BEGRUNDELSER:

Klageren: Ønsker kontrolafgiften annulleret samt at klage over stewardens adfærd og har til støtte herfor gjort gældende:

"I was ticketed by him for fare evasion on the night of November 12th under the following circumstances:

- 1) I entered the train at the airport Metro stop, having bought my ticket using the Mobilbilletter system on my mobile phone;

- 2) while the train was still stopped at the airport station, and the doors were *open*, I noticed that the mobile image of my “ticket” showed a problem (it looked like a regular ticket, but on closer inspection, there was a note saying that there had been an error and it wasn’t valid)
- 3) having never seen this before on Mobilbilletter, I approached the Metro officer on the train and asked for his advice—not, I believe, the normal behavior of someone attempting to avoid paying a fare;
- 4) his reply was to close the doors of the Metro car *with his hands* to prevent me from leaving, thus enabling him to claim that I was traveling without a proper ticket—although the train was still stopped at the station;
- 5) in preventing me from leaving the stopped train, he also separated a small child from its parents—the child, about four years old, had run onto the train ahead of the adults, and the parents literally had to scream and pound on the door to get the Metro officer to let them in, at which point he yelled *at them* as the source of the problem; he continued to block my exit; the train remained stopped at the airport station as this occurred;
- 6) as soon as the train started moving, he started writing me a ticket—despite the polite but vigorous protests of several other passengers on the train, who witnessed his behavior toward me; two Danish women I had never seen before, and who were apparently not acquainted with one another, approached him independently and pleaded with him for several minutes each to show some justice toward me and not issue that fine—for their trouble, he yelled at them, too; one of the women was so incensed that she wrote down her name and phone number and told me to contact her for help if I needed it.

The Metro officer’s pattern of behavior—not just toward me, but toward the family he separated, and toward the passengers who tried to intercede for me—indicates a problem.

Trapping a passenger on a Metro car in order to ensure that a fine is issued is an abuse of power and a travesty of justice. It constituted enough of an offense to the Danish notion of fairness that two Danes I’ve never met spoke up to protest—something I’ve never seen before in my four years in this country.

There would have been no offense to Danish rules or justice if the Metro officer had simply allowed me to step off the train car to resolve the problem with my Mobilbilletter. That is what should have happened.

If you contend—as the Metro system apparently has—that it was my mistake for boarding the train with something that looked like a perfectly valid ticket but was not (due to an error by Mobilbilletter service, not by me, as the attached SMS from the service shows), then I would simply point out that justice and fairness would dictate allowing me to get off the Metro and fix the problem, while it was still stopped at the station where I boarded—which is what I attempted to do. I imagine that there is some understanding on your part the electronic ticketing system does not always work perfectly, and neither do people; in my case, the fact that I was stepping off a 10-hour flight from Beijing may have made me slower to react to the strange image on my Mobilbilletter ticket than I would have been otherwise.

But in any case, I *did* notice the problem and sought help from the Metro officer before the doors closed or the Metro car left the station where I boarded. *Therefore, I don't believe that I violated the rules by taking an unpaid ride.* Had I known the Metro officer was going to take the bizarre step of closing the doors manually, trapping me on the train, then I would simply have stepped off without speaking to anyone.

I would ask you to take a serious look at the conduct of this Metro officer, and ask whether this is consistent with justice and respect for the law. Not only his treatment of me, but the needless fright he inflicted on the child he separated from its parents, and his bullying response to the women who spoke up to protest him fining me, should be reason for concern about his professionalism and character. His behavior left an impression of fear and injustice on several people, and that seems to me inconsistent with what Denmark strives to achieve as a society.

Please see my replies to each claim of the Metro service in their reply:

- 1) *We have asked the steward, if he remembers the episode, but unfortunately he cannot remember the exact episode. However he replies, that he would never act as describes by the complainant. Furthermore he says, that if he is approached by a passenger who enters the train and approaches him right away, he will either get off the train with the passenger and assist him/her or, if there is no time to get out, he will accompany the passenger to the next station, and get off here, in order to help.*

The steward's inability to remember this incident is not evidence for or against my claim, nor is his assertion of what he "would" do if approached for help by a passenger. His recollection of events and his hypothetical claims cannot be given more or less weight than mine.

What definitely ***can*** be given weight, however, is the independent evidence. This is not a case of he-said-she-said: as I have demonstrated, there were eyewitnesses to his behavior, two of whom reproached him directly, and one of whom offered her name and phone number so she could be contacted by the Metro authorities to present evidence.

I have done my part to provide independent evidence of my claim. Even the most elementary commitment to fairness and justice would require the Metro service to pick up the telephone and call that eyewitness whose contact information has been provided. I repeat: this is not a case of the steward's word against mine; there is independent evidence available to ABTM to decide this case.

I am very disturbed to find ***no*** indication in the response of the Metro service that they have investigated any of this independent evidence. Merely asking for the response of the steward is clearly inadequate. Abuse of authority is a serious claim, and I don't make it lightly; that is why I have provided independent evidence. A minimal duty of the Metro office is to investigate that evidence. Otherwise, people who use the Metro service are completely at the mercy of the stewards, who can abuse their authority with no consequences, knowing that their employers will simply accept the stewards' denials at face value.

As a professor in a Danish university, there are multiple checks on my authority: for example, when I give examinations, there are independent "censors" present to ensure that I am grading students fairly. If students receive those protections, shouldn't passengers on the Metro system be assured the same protections from stewards empowered to hand out fines of 750 DKK?

- 2) *Regarding the witness statement, provided by the complainant in a copy of an SMS, the witness does not mention anything about the complainant being "trapped" in the train, by the steward.*

Heidi does not recap the incident in her SMS because that was not the purpose of her message: instead, she wrote to confirm that she would provide a full account of what she saw if asked. She was responding to a message from me, following up on her initial offer of help in person on the night of November 12th.

If the Metro service really wanted to know whether Heidi actually saw the steward trapping me on the train, all they had to do was ask her. Heidi's message was never intended as a substitute for her account of the steward's behavior.

The Metro service apparently chose ***not*** to use this information, even though I made it as easy for them as possible.

If the Metro authorities had said to me, "We don't have time to call Heidi, you ask her to write to us directly with her account," I would happily have cooperated. But no one ever followed up in any way on this offer of independent evidence, nor is there any indication that the Metro service has tried to review any video footage of that evening's events in the Metro car.

Why isn't the Metro service following up on the independent evidence available to it? Passenger claims of abuse of authority by a steward would seem to deserve that level of respect.

- 3) *However, the SMS suggests that the steward could have let the complainant step off the train, until she got a valid ticket – but according to our procedures, the stewards are instructed to issue a fine, if passengers are met without valid ticket.*

Heidi was pointing out that steward had not yet begun checking anyone's ticket, the train was stopped at the airport station and the doors were open. I could simply have stepped off the train, and he could have let me do so; instead, he closed the doors on me, trapping me on the train. That is the whole objection here in my complaint, and was the substance of the complaint by the other two passengers who approached the steward to complain about his abuse of authority. As you surely know better than I, it is pretty uncommon in everyday life in Denmark for public confrontations to occur; so when I tell you that two separate people—unknown to me, or to each other—confronted this steward about his behavior, that should indicate to you how unusual this incident really was. It deserves a proper investigation.

- 4) *We furthermore note that the purchase attempt took place at 18:43 hrs. and the fine was issued at 19:11 hrs. – Approximately half an hour later. This does not support the claim, that a purchase attempt went wrong, and the complainant then boarded the train to get help from a steward.*

The time elapsed between my attempt to purchase a ticket and the steward issuing a fine in no way undermines my claims; if anything, the data ***support*** my claims, because what was happening in that time was the massive drama created by the steward. Events unfolded as follows:

- a) My seeing the error message from Mobilbilletter
- b) My approaching the steward for help

- c) The steward closing the train door with his hands
- d) The panic of the Asian family when the steward separated from their young son, who had run into the train car just before the steward closed the doors
- e) The Asian family begging the steward to open the doors
- f) The steward yelling at the Asian family for allowing their son to run into the train car
- g) The steward turning back to me to tell me he was going to give me a fine
- h) My pleading with the steward to simply let me off the train
- i) The steward refusing and the train closing the rest of its doors and starting to move
- j) The steward being approached by the two different passengers asking him not to fine me—their talking to him, and his yelling at them to mind their own business took up at least 15 minutes; it was a very un-Danish scene of public confrontation

All of that happened ***before*** the steward had a chance to write me a fine. It is therefore not surprising that 28 minutes passed between the time I tried to buy a ticket and the time the steward finally issued me the fine—he was very busy creating this whole situation, and arguing with the people who tried to protest against his abuse of authority.

5) Finally it can be seen from the attached document – Udskrift fra Unwire – that the complainant did not try to do another purchase, despite the direction from the SMS.

Again, this is not evidence against my appeal. I never claimed that I attempted to do another purchase—because instead of doing that, I went to the steward for help; I did not understand what had happened with Mobilbilletter, and thought that he might be able to clarify. If he had actually helped me, I ***would*** have purchased another ticket. Instead, the steward created a huge conflict. As the SMS from Heidi indicates this entire situation was totally unnecessary, and manufactured by the steward himself.

The entire response of the Metro system to my appeal is based on two things:

- The steward's claim that he doesn't recall the incident, but wouldn't have behaved as I describe—which is really to be expected of someone accused of an abuse of authority
- Misinterpretation of circumstantial data, such as the time elapsed between when I attempted to purchase a Metro ticket and when I was fined

As a matter of basic justice and fairness, a claim of abuse of authority by a public employee deserves to be taken seriously—that includes making an effort to investigate the evidence available. Merely asking the public employee if he abused his authority is ***clearly*** inadequate. I ask the ABTM to consider whether the Metro service has lived up to its public responsibility here; I do not think that it has, for the reasons I state above.

I am now afraid to ride the Metro because of this officer's conduct; having been raised to respect and trust public officials, this was a surprisingly traumatic event. This casual response by the Metro service ("the steward says it couldn't have happened, and we believe him") makes things worse, because it suggests that Metro employees will experience ***zero*** accountability for their actions. As a passenger, this tells me that I'm not safe on public transport.

From the response of the Metro service to my complaint, I realized there may be a misunderstanding about why I approached the Metro steward for help, and what I asked him to clarify for me. It was ***not*** the SMS error message from Mobilbilletter that I attached as evidence in my original

appeal. I included that error message as evidence that there was a technical failure in Mobilbilletter, but I realized today—after rethinking the response of the Metro system to my complaint—that they may believe that’s what I saw and took to the steward for clarification.

That wasn’t the case: what I saw was actually much more confusing than that SMS error message, and that’s why I went to the steward for help.

Shortly after ordering my ticket on Mobilbilletter, a picture like this appeared on my mobile phone screen: an image of a ticket, which looked normal, except for the word “udløbet.” I had never seen that image, or that word, before.



So I went to ask the Metro steward, standing in the doorway, what this odd picture meant. Since the doors were open and the train was still stopped at the airport, the reasonable thing to do would have been to a) answer my question, and b) suggest I step off the train and try again to order my ticket. Instead, the steward closed the doors on me so that I could not leave, and informed me that he would be giving me a fine (trying to buy another ticket from Mobilbilletter as I stood there was therefore useless).

Please note here that I am not claiming my unfamiliarity with the Danish language as a reason that ABTM should cancel this fine: instead, I am explaining what led me to approach the steward in the first place, which seems to be a source of misunderstanding, based on the reply of the Metro system to my complaint.

The reason I think ABTM should void the fine is that the steward abused his authority by not allowing me to step off the train, since it was still open and stopped at the station where I tried to board. I didn’t “steal” a ride from the Metro—I was trapped by the steward manually closing the doors so I could not leave. This is not normal enforcement of rules or keeping order: it was a misuse of power, and that is why two strangers took the unusual step of publicly confronting the steward for his actions.”

Indklagede: Fastholder kravet om betaling af kontrolafgiften og har til støtte herfor gjort gældende:

“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 Metro Travel regulations found on 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 fine is issued as the complainant has not received her SMS ticket on her phone.

With reference to the Metro travel regulations, it says:

On all stations, the following information is available on the information boards:

<p>4 Du modtager en SMS-billet. Bemærk: Billetten skal være modtaget inden påstigning for at være gyldig. (Prisen på en SMS-billet er billetprisen + alm. SMS-takst)</p>	<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">(billet vises)</div>	<p>Tjek at din billet er gyldig til din rejse og at den er modtaget på telefonen inden påstigning. (Prisen på billetten er alm. takst)</p>	<p>Check that your ticket is valid for the journey and ensure that the ticket is received before you board the metro. (The price of a SMS ticket is the ticket + normal SMS charges)</p>
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As well as:

Penalty

Remember it is your responsibility to have a valid ticket or travel card for both you and your potential companions. Lack of ticket or card and travelling during curfew (pensioners and/or bicycles) will per 1. January 2013 result in a penalty charge of 750 DKK per adult, 375 DKK per child/dog and 100 DKK per bicycle and onward travel in this period is not allowed. We refer you to www.m.dk and the travel rules for applicable penalty charges.

Based on the picture provided by the complainant, the SMS instructs the complainant to try again. As we read the complaint, the complainant tried to purchase a ticket, and as that did not work, she chose to board the train and approached the steward. We have asked the steward, if he remembers the episode, but unfortunately he cannot remember the exact episode. However he replies, that he would never act as describes by the complainant. Furthermore he says, that if he is approached by a passenger who enters the train and approaches him right away, he will either get off the train with the passenger and assist him/her or, if there is no time to get out, he will accompany the passenger to the next station, and get off here, in order to help. But in cases where he is approached by a passenger after he has started his revenue inspection, he will issue a fine. Regarding the witness statement, provided by the complainant in a copy of an SMS, the witness does not mention anything about the complainant being "trapped" in the train, by the steward. However, the SMS suggests that the steward could have let the complainant step off the train, until she got a valid ticket – but according to our procedures, the stewards are instructed to issue a fine, if passengers are met without valid ticket.

We furthermore note that the purchase attempt took place at 18:43 hrs. and the fine was issued at 19:11 hrs. – Approximately half an hour later. This does not support the claim, that a purchase attempt went wrong, and the complainant then boarded the train to get help from a steward.

Finally it can be seen from the attached document – Udskrift fra Unwire – that the complainant did not try to do another purchase, despite the direction from the SMS:

Købsoversigt fra Unwire:

Købstidspunkt	Kunde ID	Produkt	Bestillingskanal	Betalingskanal	Operatør	Applikation	Billet status	Betalingsstatus
Tirsdag 11. februar 2014 13:33	[REDACTED]	2 zoner voksen	Mobil internet	Dankort	Telenor		Afleveret	Faktureret
Tirsdag 12. november 2013 18:43	[REDACTED]	4 zoner voksen	Applikation	JCB	Telenor		Fejl	Fejl
Onsdag 16. oktober 2013 22:34	[REDACTED]	2 zoner voksen	Applikation	Klippedkort	Telenor		Afleveret	Not initialized
Freddag 30. august 2013 15:20	[REDACTED]	2 zoner voksen	Applikation	Klippedkort	Telenor		Afleveret	Not initialized
Mandag 26. august 2013 13:34	[REDACTED]	2 zoner voksen	Applikation	Klippedkort	Telenor		Afleveret	Not initialized
Tirsdag 20. august 2013 20:33	[REDACTED]	2 zoner voksen	Applikation	Klippedkort	Telenor		Afleveret	Not initialized
Tirsdag 20. august 2013 18:30	[REDACTED]	2 zoner voksen	Applikation	Klippedkort	Telenor		Afleveret	Not initialized
Lørdag 20. juli 2013 13:38	[REDACTED]		Applikation	Klippedkort	Telenor		Afleveret	Not initialized
Onsdag 3. juli 2013 09:17	[REDACTED]	2 zoner voksen	Applikation	Klippedkort	Telenor		Afleveret	Not initialized

Det konkrete købsforsøg:

Tidsstempel	Handling	Retning	Tekst
12. november 2013, 18:43:20	Billet bestilt		
12. november 2013, 18:43:20	Udsteder billet		
12. november 2013, 18:43:20	Udsteder billet	→	Cydlig fra 18:43 12.nov.2013 1 voksen Billet Fra zone 4 i 4 zoner (V-UM7) Udløber 20:28 12.nov.2013 Hovedstadsområdet Pris 48 kr Bus&Tog Mobilbillet Box 340 0900 København C DF 70101415
12. november 2013, 18:43:20	Billetten er annulleret grundet kommunikations fejl	→	
12. november 2013, 18:43:20	Leverer billet	→	
12. november 2013, 18:43:20	Info besked sendt	→	På grund af fejl i systemet, kunne vi ikke sende din billet. Påv at bestille igen. Du betaler kun for den billet, du modtager Bus&Tog Mobilbillet
12. november 2013, 18:43:20	Billetten er annulleret. Billetten koster mere end din udbyder tillader	→	
12. november 2013, 18:43:32	Info besked modtaget	→	

SEKRETARIATETS BEMÆRKNINGER:

Sekretariatet har under sagen fra klageren modtaget følgende beretning fra en passager på den pågældende rejse:

”Vidneberetning, 12. november 2013

Vidne: [REDACTED]

I toget (Metro) ved Kastrup L [REDACTED] så jeg en kvinde [REDACTED] i samtale med konduktøren. Jeg lagde efterhånden mere mærke til samtalen, da der var en trykket stemning i kupeen og det virkede som om de andre passagerer også lyttede med. Brooke var tydeligvis berørt, grådkvalt og træt efter sin rejse og konduktøren

var urokelig og lettere presset i situationen. Jeg henvendte mig for at se, om jeg kunne hjælpe med noget, da jeg kunne høre, at [redacted] talte engelsk og derfor regnede med, at hun var på besøg i Danmark. Måske kunne de bruge en mellemmand, der talte både dansk og engelsk. Så vidt jeg kunne forstå havde [redacted] haft problemer med at indløse billet på stationen/mobilen og havde henvendt sig til konduktøren ombord på toget for at få en løsning på det. Han havde da reageret ved at give hende en bøde for at køre uden billet, og insisterede på at gennemføre det, selvom hun tydeligvis havde været meget åben omkring sin situation og ikke forsøgt at køre uden billet med vilje. Heller ikke mit tilbud om at klippe for hende med mit klippekort blev accepteret af konduktøren, så jeg gav [redacted] mit nummer, i fald hun ville gå videre med sagen. Jeg kunne godt se, at konduktøren var presset og nok mærkede modstand fra de andre i kupeen, og muligvis var det derfor han insisterede på sin ret for at bevare autoritet. Da jeg henvendte mig på dansk sagde han, at han ikke bare kunne lade hende slippe, for det havde han ikke lov til i sit arbejde, hvis ikke han ville fyres. Det er til dels forståeligt, men forhåbentlig ikke den praksis, der rent faktisk hersker. Selvfølgelig skal han håndhæve reglerne, men de er vel primært til for at holde finansieringen af togdriften oppe og i og med at [redacted] tydeligvis havde prøvet at løse billet, så var hun ikke en trussel mod det. Så vidt jeg kan vurdere kunne han godt have bevaret sin autoritet og imødekommet [redacted] ved at sætte hende af på nærmeste station indtil hendes mobilbillet-situation var løst. Det andet virkede mere som en unødvendig magtdemonstration fra en mand, der virkede træet og reagerede kort for hovedet over for andre passagerer også. ”

Til dette har Metro Service anført følgende:

”Vi bemærker, at det fremsendte vidneudsagn ikke modsiger stewardens udsagn om, at billetteringen var gået i gang, da klager vælger at opsøge stewarden.

Af vidneudsagnet fremgår blot : *”I toget (Metro) ved Kastrup Lufthavn så jeg en kvinde [klageren] i samtale med konduktøren”*.

Vi henviser atter til stewardens bemærkning på kontrolafgiften: *”pax hade ikke billet fra cph jeg billetter pax kommer til mig med sin mobil og se til mig at hun skal købe billet nu jeg se til pax at det er førsent vis du ikke har billet skriver jeg en kontrolafgift til dig pax påstod at hun er turist”*. Endvidere henviser vi til stewardens bemærkning, på vor forespørgsel om han husker episoden – hertil svares: *”We have asked the steward, if he remembers the episode, but unfortunately he cannot remember the exact episode. However he replies, that he would never act as describes by the complainant. Furthermore he says, that if he is approached by a passenger who enters the train and approaches him right away, he will either get off the train with the passenger and assist him/her or, if there is no time to get out, he will accompany the passenger to the next station, and get off here, in order to help. But in cases where he is approached by a passenger after he has started his revenue inspection, he will issue a fine”*.

Klagers beskrivelse af, at hun blev fanget af stewarden, der lukkede dørene – understøttes heller ikke af vidneudsagnet.

Hertil skal det bemærkes, at stewarden skal ”isolere” døren – dvs. med værktøj slå den automatiske lukkemekanisme fra, førend døren ville kunne lukkes manuelt af stewarden.

Vi kan naturligvis ikke vide, hvordan ordene er faldet den konkrete sag. Men det er ikke korrekt, at stewards risikerer at blive fyret, hvis de i en helt særlig situation, vælger ikke at udskrive en kontrolafgift. En særlig situation, kunne være, hvis stewarden bliver kontaktet med et spørgsmål fra en passager, **inden** billetteringen startes.

Stewardenes forholdsordre er, at de ikke skal sagsbehandle ude i toget, men blot udskrive kontrolafgifter til de passagerer, der under billetkontrol ikke kan fremvise gyldig rejsehjemmel – uanset årsagen. Denne fremgangsmåde sikrer, at stewarderne behandler alle passagerer ens, samt minimerer risikoen for overfald, idet stewarden kan have svært ved at bevare sin myndighed over for den næste passager der skal have en kontrolafgift, hvis denne passager lige har set stewarden lade en anden passager slippe.

Det fremsendte vidneudsagn bringer således ikke nyt frem, der får os til at ændre på den tidligere beslutning om at fastholde kontrolafgiften.”

ANKENÆVNETS BEMÆRKNINGER:

Retsgrundlaget:

Ifølge § 2, stk. 2, i lovbekendtgørelse nr. 969 af 08. oktober 2009 om lov om jernbaner, gælder loven også for metroen. Af § 23 fremgår det, at transportministeren fastsætter regler om jernbanevirksomhedernes adgang til at opkræve kontrolafgift og ekspeditionsgebyr for passagerer, der ikke foreviser gyldig rejsehjemmel (billetter og kort).

I henhold til § 4 i bekendtgørelse nr. 1132 om kontrolafgifter af 08. september 2010, fastsætter jernbanevirksomheden bestemmelser om kontrolafgift i forretningsbetingelserne.

Det fremgår af Metroens rejseregler (forretningsbetingelser), at passagerer skal have gyldig billet, gyldigt stemplet klippekort eller gyldigt månedskort fra rejsen begynder. Billet eller kort skal opbevares under hele rejsen og indtil Metroens område forlades. Billetter og kort skal fremvises til Metro Stewarden på forlangende. Billetkontrol kan ske både under rejsen, ved udstigning og på Metrostationen efter afsluttet rejse. Hvis man ikke kan fremvise gyldig billet eller kort under rejsen, i forbindelse med udstigning eller på Metrostationens område efter at have afsluttet rejsen, udstedes en kontrolafgift. Afgiften er et girokort, som kan betales via bank eller på posthus. Kontrolafgiften er samtidigt billet til vidererejse til den Metrostation, passageren oplyser som bestemmelsesstationen. Kontrolafgiften er 750 kr. for voksne.

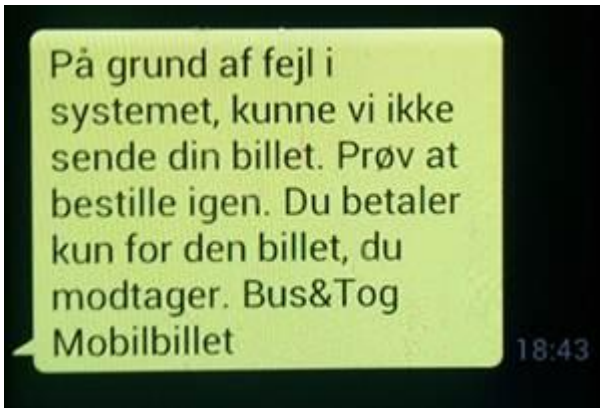
Af de fælles rejseregler for Hovedstadsområdet fremgår om billetter købt via applikation:

”Rejsen må ikke påbegyndes uden at du har en gyldig billet. Ved billetkontrol skal du finde Mobilbilletten frem i telefonen og vise den til kontrolpersonalet. Mobilbilletten skal opbevares under hele rejsen. Du har pligt til at sørge for, at alle oplysninger i Mobilbilletten kan vises til kontrolpersonalet f.eks. ved at scrolle eller bladere efter behov, eller ved at overgive din mobiltelefon til kontrolpersonalet. Kan du ikke vise gyldig billet, skal du betale en kontrolafgift. Det gælder også hvis telefonen er løbet tør for strøm eller er gået i stykker.”

Den konkrete sag:

Det fremgår af de fælles rejseregler for Hovedstadsområdet omhandlende køb af mobilbilletter, at billetten skal være bestilt, bekræftet og modtaget på telefonen inden påstigningen.

Ankenævnet lægger til grund, at klageren på sin telefon kl. 18:43 modtog følgende besked:



- Som er den, der fremgår af udskriften fra Unwire, og som er den, klageren vedlagde sin første henvendelse til Metro Service.

Det fremgår af udskriften fra Unwire, at baggrunden for det mislykkede billetkøb skyldtes, at billetten til 48 kr. kostede mere end klagerens teleudbyder tillod. Det fremgår ikke af sagen, om denne besked leveres til telefonen eller alene figurerer i Back Office i Unwire.

Men uanset om beskeden var klageren bekendt eller ej, valgte hun i strid med rejsereglerne at stige om bord på metroen uden at have modtaget nogen gyldig mobilbillet på sin telefon.

Således som sagen foreligger oplyst, hvorefter det i forbindelse med klagerens bestilling af billetten er noteret i udskriften fra Unwire, at operatøren ikke tillod billetkøbet, og beskeden på klagerens telefon om, at der var en systemfejl, men at man skulle forsøge at bestille billet igen, finder ankenævnet, at Metro Service ikke skal bære ansvaret for klagerens manglende mulighed for køb af billet via sin mobiltelefon den pågældende dag.

Klageren forsøgte i øvrigt ikke at bestille en billet på anden måde i tidsrummet fra kl. 18:43 til kontrolafgiften blev påbegyndt udstedt kl. 18:50.

Kontrolafgiften blev dermed pålagt med rette.

Det af klageren anførte om, at hun kontaktede stewarden umiddelbart efter påstigning, og inden han påbegyndte billettering, er ikke bekræftet af hverken vidnet eller stewarden. Stewarden og Metro Service har oplyst, at når billetteringen er gået i gang udstedes kontrolafgift til de passagerer, som herefter måtte henvende sig, og som ikke har gyldig billet. Stewarden har desuden i en note til kontrolafgiften anført følgende:

”pax havde ikke billet fra cph [Lufthavnen], jeg billetterer, pax kommer til mig...)

Klageren findes herefter ikke på tilstrækkelig vis at have løftet bevisbyrden for, at hun rettede henvendelse til stewarden, inden han var begyndt at billettere.

Den omstændighed, at klageren ifølge det oplyste tilbød at forlade metroen, som endnu ikke var kørt, kan i det konkrete tilfælde ikke føre til et andet resultat, når det ikke kan lægges til grund, at klageren kontaktede stewarden inden denne var begyndt at billettere. Gyldig rejsehjemmel må som udgangspunkt være påkrævet allerede ved påstigning på metroen, idet man herefter må betragtes som passager, som har til hensigt at modtage en transportydelse.

Det bemærkes, at pligten til at betale kontrolafgift ikke er betinget af, om passageren har forsøgt at unddrage sig betaling. Dette er et område med stor mulighed for omgåelse af reglerne, hvorfor ankenævnet ikke finder, at der er grundlag for at fravige reglerne om, at passageren selv bærer ansvaret for korrekt billettering.

Som følge af det anførte finder ankenævnet, at der ikke foreligger sådanne særlige omstændigheder, der fritager klageren for kontrolafgiften.

Imidlertid finder ankenævnet, at Metro Service efter klagerens henvendelse den 23. november 2013, hvor hun indgav en klage over kontrolafgiften og i tilknytning dertil anførte, at stewarden lukkede dørene manuelt og afskar hende muligheden for at komme af metroen og løse problemet med billetten, samt at flere passagerer protesterede over hans behandling af klageren, fordi den var så uretfærdig, burde have foretaget en høring af stewarden om det passerede.

Spørgsmålet om, hvorvidt klageren blev tilbageholdt uberettiget, falder uden for ankenævnets kompetence, og må afgøres ved klagerens eventuelle indgivelse af en politianmeldelse.

Klageren har ikke retlig interesse i klagen over, om stewardens opførsel over for de øvrige passagerer var utilbørlig eller kritisabel. Denne del af klagen tages derfor ikke under pådømmelse i nærværende sag.

Ankenævnet bemærker i relation til det af Metro Service anførte om, at kontrolafgiften først er udstedt kl. 19:11, at Metro Service i tidligere sager har oplyst, at det tidspunkt, som på kontrolafgiften står anført med "created date" er det tidspunkt, hvorpå kontrolafgiftens behandlings afsluttes og sendes fra PDA (stewardens håndholdte computer) til Back Office (kl. 19:11), og at det tidspunkt som benævnes "fee date" er det tidspunkt, hvorpå stewarden har påbegyndt indtastningen af kontrolafgiften på sin PDA; i det konkrete tilfælde kl. 18:50. Kontrollen har derfor fundet sted fra kl. 18:50 og ikke fra kl. 19:11.

Ankenævnet træffer herefter følgende

AFGØRELSE:

Metro Service er berettiget til at opretholde kravet om klagerens betaling af kontrolafgiften på 750 kr. Beløbet skal klageren betale inden 30 dage, jf. ankenævnets vedtægter § 15. Da klageren ikke har fået medhold i klagen, tilbagebetales klagegebyret ikke, jf. ankenævnets vedtægter § 26, stk. 4, modsætningsvist.

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.

På ankenævnets vegne, den 22. september 2014



Tine Vuust
Nævnshoved