

## AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2018-0090
- Klageren:** XX  
Sverige
- Indklagede:** Metro Service I/S v/Metro Service A/S  
**CVRnummer:** 21 26 38 34
- Klagen vedrører:** Kontrolafgift på 750 kr. grundet for få zoner. Klageren var stadig ombord på metroen, da zonerne skiftede.
- Parternes krav:** Klageren ønsker kontrolafgiften annulleret  
Indklagede fastholder denne
- Ankenævnets sammensætning:** Nævnshoved, landsdommer Tine Vuust  
Rasmus Markussen  
Torben Steenberg  
Bjarne Lindberg Bak  
Helle Berg Johansen

Ankenævnet for Bus, Tog og Metro har på sit møde den 18. juni 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, som er bosiddende i Sverige, havde været på besøg i Danmark og rejste den 2. marts 2018 med metroen tilbage til Lufthavnen. Ifølge klageren var han forsinket og kunne ikke finde sit rejsekort, hvorfor han skyndte sig ind i metroen, hvor han efter påstigning købte en mobilbillet. Ved en fejl kom han dog til at købe en billet til 2 zoner fra zone 01 i stedet for en billet til 3 zoner. Lufthavnen ligger i zone 04, og en rejse hertil kræver en billet til 3 zoner.

Ifølge logs fra Metro Service lukkede metroens døre på Femøren station kl. 17:35:30 og toget afgik kl. 17:35:32. Næste station er Kastrup i zone 04.

Når dørene lukkes på Femøren st., skifter zonerne fra 03 til zone 04, idet man ikke kan komme af, før man er i zone 04. Man skal derfor have billet til zone 04 allerede på dette tidspunkt.

Kl. 17:37:04 ankom metroen til Kastrup st.

Ifølge stewardens elektroniske log, var der kontrol af klagerens rejsehjemmel, efter at metroen havde forladt Femøren st. Herefter blev klageren kl. 17:40 pålagt en kontrolafgift for manglende zone.

Ifølge klageren blev den kontrolafgift, som han fik udleveret manuelt udstedt kl. 17:39.

Klageren anmodede den 2. marts 2018 Metro Service om at annullere kontrolafgiften og anførte til støtte herfor, at det skyldtes en fejl, at han kun havde købt en billet til 2 zoner, og at han ellers altid købte de korrekte billetter og havde rejsekort.

Metro Service fastholdt den 5. marts 2018 kontrolafgiften med henvisning til selvbetjeningsprincippet, samt at billetten ikke var gyldig, at der er placeret zonekort på stationen, at det er muligt i DotMobilbilletter-appen at søge på, hvor mange zoner rejsen kræver, at et rejsekort kun er gyldig rejsehjemmel, når det er checket ind, samt at god tro ikke kan tillægges vægt.

Efter 36 dage sendte klageren endnu en klage til Metro Service den 10. april 2018, hvor han tilføjede, at han havde haft gyldig billet, på det tidspunkt, hvor kontrolløren havde taget kontakt til ham, og at denne havde spurgt, hvilken station klageren havde i sinde at stå af på, hvorefter kontrolløren havde fortalt ham, at hans billet ikke var gyldig til Lufthavnen. Kontrolløren havde også afslået klagerens forslag om at stå af på næste station og købe en ny billet, forinden de skiftede til en zone, hvor hans billet ikke var gyldig. Kontrolløren var blevet ved med at stille klageren spørgsmål, indtil de havde forladt Femørens st., og klagerens billet ikke længere var gyldig.

Metro Service fastholdt den 11. april 2018 kontrolafgiften med henvisning til, at når dørene lukker på Femøren st., skal man have billet til zone 04, som man kører ind i, inden man ankommer til Kastrup st., samt at de forventer, at deres personale opfører sig pænt, og at klageren ikke havde nævnt noget om stewardens opførsel i sin første henvendelse. På dette sene tidspunkt kunne de få en udtalelse fra stewarden, som ikke kunne forventes at kunne huske så langt tilbage.

## **ANKENÆVNETS BEGRUNDELSE:**

Klageren havde ved en fejl købt en mobilbillet til kun 2 zoner fremfor 3 zoner. Mobilbilletten var gyldig i zone 01 og 03, men ikke i zone 04.

Ifølge klagerens oplysninger blev den manuelle kontrolafgift, som han fik udleveret, udstedt kl. 17:39.

Den elektroniske kontrolafgift, som stewarden sender digitalt til Metro Service, blev påbegyndt kl. 17:40 fra Femøren st.

Metro Service har i tidligere sager forklaret, at stewarden indtaster den station, som metroen lige har forladt, når passagerens rejsehjemmel kontrolleres.

Ifølge logs fra Metro Service forlod metroen Femøren st. kl. 17:35:32 og ankom til Kastrup st. kl. 17:37:04.

På den baggrund lægger ankenævnet til grund, at kontrollen af klagerens rejsehjemmel skete efter Femøren st., hvor zonen skifter fra 03 til 04. Klagerens billet var således ikke gyldig, og kontrolafgiften blev dermed pålagt med rette.

Ankenævnet finder, at der ikke er fremført sådanne særlige omstændigheder, der kan føre til, at klageren skal fritages for kontrolafgiften.

## **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 issued an invalid ticket penalty charge incorrectly for a journey within the Copenhagen area to the airport on the Metro Service.

I am a foreigner and was travelling on the metro towards the airport and was issued an invalid ticket fine. I had boarded the Metro train after I purchased a valid ticket via the DOT app due to the fact I could not find my valid travel card (it was in my possession but I could not find it to scan it).

I was contacted by the Metro steward before passing across the three zone line and asked to produce my ticket - at that time I was in possession of a valid ticket (from the app) and within the two zones I had a valid ticket for. The charge states that I was travelling without a valid ticket, which at the time I was contacted by the steward this was not the case. I had brought a ticket for two zones and showed the steward. The steward asked where I was planning to travel to, to which I replied the airport. He replied that I was not in possession of a valid ticket for that journey.

I explained that I would get off at the next station (Femøren) that we were about to arrive at with the train and purchase another ticket. I was talking english and the conversation took a little time, but the steward stated that I had not purchased the correct ticket for my planned journey as my intent was to travel to the airport and therefore my ticket is invalid. He then continued to ask me further questions about my travel and the fine process.

My complaint is according to the law, when I was initially stopped I was in possession of a valid ticket. The behaviour of the steward and the questions I was asked (we talked about that I could not find my travel card and I had used the app instead) meant that I was unable to leave the train and I passed into the next zone where I was not in possession of the correct ticket and was given a fine. I did not want to leave the train whilst being questioned for fear of being charged with another offence.

My complaint and case is that upon first contact I was in possession of a valid ticket and should have been advised to leave the train or I will incur a fine. The conduct of the steward meant I received a fine that could have been avoided with the correct advice and view of the situation - I was foreign, not used to the app and only visiting Copenhagen, so my knowledge of the system is not to the level of a local person. I complained directly to the Metro Service but they said as the complaint was over 4 weeks old they could not ask the steward for his memory of the account and state where the train was when I was first contacted to check I was issued the ticket correctly. Unfortunately this is not my fault the steward was not able to remember. As I have said, when I was contacted by the steward, my ticket was valid and I should have been advised to leave the train and if I did not I would incur a fine.

In this case, at the time of contact I was in possession of a valid ticket and the law from my understanding does not allow to give passengers penalty tickets purely based on intent. Fair and true advice about the law regarding travel must be given to all passengers use the Metro system. I feel the fine is not valid given this case and I would ask you kindly consider my case and removal of the fine."

### **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) and on Din Offentlige Transport - <https://www.rejsekort.dk/~media/rejsekort/pdf/flr/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.

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 2<sup>nd</sup> of March 2018 at 17:39 after the train had left Femøren station (zone 03) towards Lufthavnen station (zone 04). When traveling from zone 01 to the airport, you travel through the zones 01, 03 and 04 and thus need a ticket valid in 3 zones. As the complainant had only a ticket for 2 zones, he did not have a valid ticket when inspected and therefore a fare evasion ticket was issued according to the travel regulations.

In his first inquiry, the complainant explained that he could not find his rejsekort and that he therefore bought a mobile ticket as he had done before - and that it was simply due to a mistake, bustle and panic that he did not buy the correct ticket/zones.

The complainant also expressed that he thought it was poor service that the steward did not just listened to his explanation but issued a fare evasion ticket especially because he (the complainant) found his rejsekort while speaking with the steward.

Our stewards have many tasks; One of them is, among other things, ticket inspection. However, a steward may not handle any sort of case procedure, but may only check whether a valid ticket can be displayed during inspection and, if not, issue a fare evasion ticket. Case processing is done exclusively by the Customer Service Department after written inquiry.

For good measure, we have looked at the history of the rejsekort the complainant has sent a photo of in his first inquiry. It is an anonymous rejsekort and it was not checked-in. In order for a rejsekort to be of significance during inspection, it must be checked-in correctly.

36 days after the complainant has received a response from Customer Service that the fare evasion ticket is maintained, he writes to us again.

In his second application, the complainant claims that he was still in zone 03 when he was inspected and thus could have left the train at Femøren station and that the steward used an unfair tactic and instead held him back with further questions for the purpose to issue him a fare evasion ticket.

The case worker has already answered the complainant that it is not possible to ask a steward about the details of an ordinary ticket inspection 39 days ago.

But it is not necessary either.

Firstly, we must reject that a steward should use the method the complainant describes to issue a fare evasion ticket. Stewards does not issue fare evasion tickets to passengers with valid tickets and they certainly do not try to fool anyone with unfair tactics.

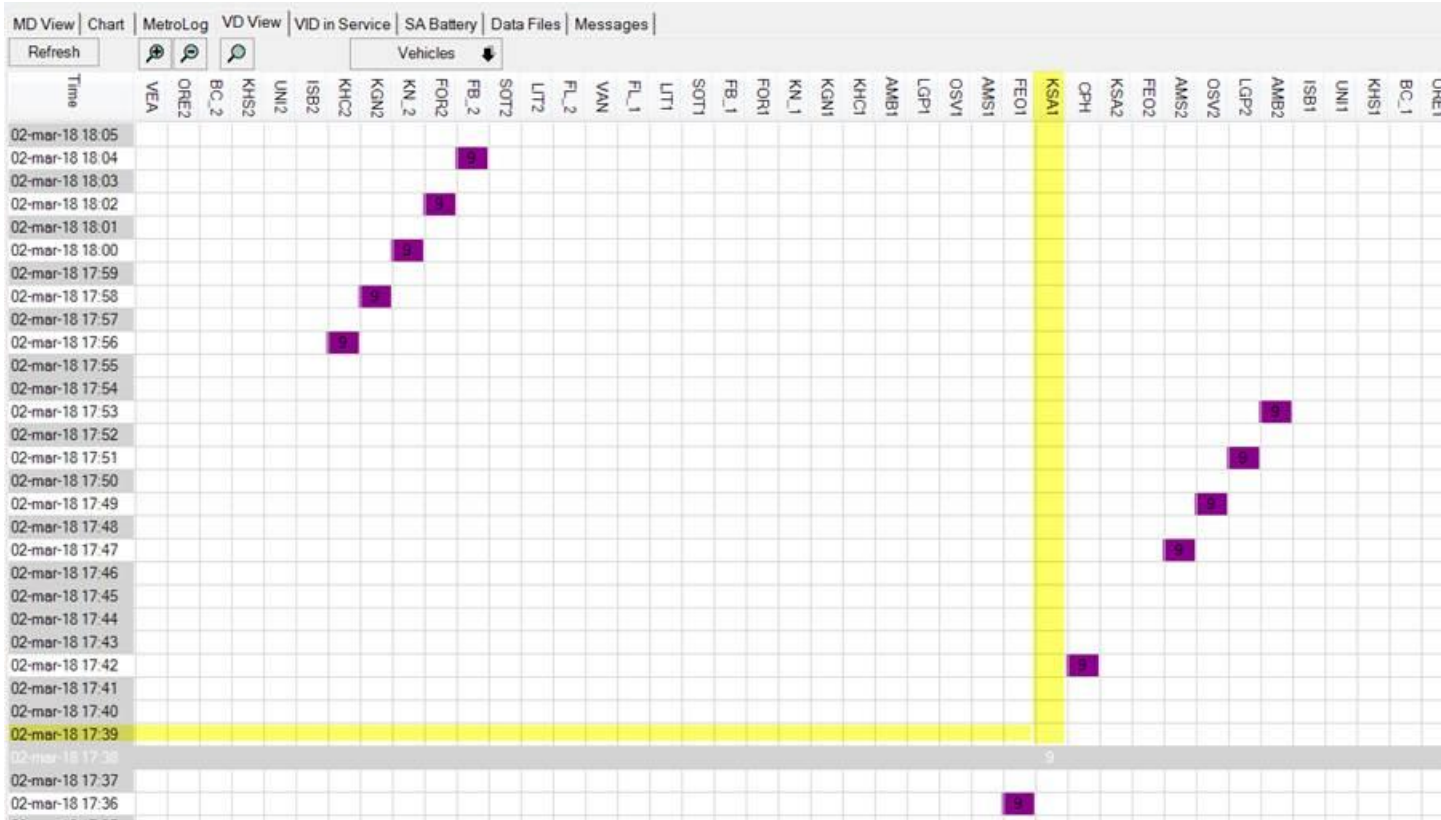
Secondly, the steward has noted on the electronic fare evasion ticket that the inspection took place in train No. 9.

All train movements are recorded in an electronic logbook and therefore we can establish, beyond any doubt, that the train departed Femøren station at 17:35:32. When the train closes the doors at Femøren station, you cannot leave the train before the next station, which is Kastrup and located in zone 04. See extracts of logbook and zone card below.

VID	Time	Type	Message	Station	Arrival From
009	2. marts 2018 17:37:04	0	Arrival	Kastrup	Femøren
▶ 009	2. marts 2018 17:35:32	3	Departure	Femøren	Amager Stra...
009	2. marts 2018 17:35:30	2	Close Doors	Femøren	Amager Stra...
009	2. marts 2018 17:35:09	1	Open Doors	Femøren	Amager Stra...
009	2. marts 2018 17:35:08	0	Arrival	Femøren	Amager Stra...



Since the fare evasion ticket was issued at 17:39 where the train was close to Kastrup station, we are convinced that the fare evasion ticket was issued correctly.



According to the above, we maintain our claim for payment of fare evasion ticket no 00743628 of 750, - DKK."

### Klageren anfører hertil:

"In my first inquiry to metro complaints, I drafted this days after the incident of being issued an evasion ticket. In recalling what happened, I presented that I was stressed and this led to me buying the wrong ticket. I initially thought that I had been approached correctly by the steward, having limited knowledge of the transport system. As I reviewed this situation the days after being issued my fare evasion ticket, I assumed by passing through zone 1 into 3, that I was already expired in my ticket. I appealed based on my previous (limited) use of the app system where I have always brought the correct ticket and that it was a mistake made by a foreigner not knowing the system well enough. In this argument I had made the assumption that from passing from zone 1 to 3, that I was out of zone 2 and my fare evasion ticket was correct. This is like how it works in London - you buy fares for specific zones, not by calculating how many zones you will travel through. This made me confused. I later realised and recalled that I was still in a correct zone for my ticket and the steward had approached me when my ticket was still valid.

Given the distinctive name of Femøren station and it is one of only two stations with the distinctive letter ø on the way to the airport from the way I was travelling, I reject that I was first approached by the steward after Femøren station and maintain i was approached as the train was travelling to Femøren. I tried to pronounce it with the steward and was unsure how to pronounce the letter ø. The exchange with the steward started before arrival and before the train departed Femøren station at 17:35:32 and lasted for several minutes into Kastrup, meaning of course that I was issued a fare evasion ticket at 17:39 where the train was close to Kastrup station. During this time I had offered to leave the train at Femøren, tried to then explain my situation, explained then the whole scenario of how and where I entered the Metro, along with giving over my identification - this took many minutes of time so it not surprising. I reject that this ticket was

issued correctly in accordance with the regulations and maintain that I could have left the train at Femøren had I been provided with correct advice by the steward in a swift manner. The log of the train, train departure and fare evasion ticket issue time do not prove that I was first approached after Femøren station. I was unable to take photos of time and location when stopped in relation to our station as I was being questioned by the steward and quite simply was confused by the whole situation at the time.

I again reject that this ticket was issued correctly given when I was first approached by the steward - I was in the correct zone for my ticket at that time."

### **Indklagede anfører hertil:**

"We have read the complainant's recent remarks and have the following comments.

All our stewards are instructed that when/if they print issue a fare evasion ticket it is always the station where the control is initiated, which is noted on the electronic fare evasion ticket, in addition to the station that the passenger indicates as being the destination.

It is a basic rule that all stewards follow and which means that when there - as in this specific case - is noted as follows:

<StationFrom>Femøren</StationFrom>  
<StationTo>Lufthavnen</StationTo>

- it means that the steward has started the ticket control after the train has left Femøren station with direction towards the airport.

We are sorry that the complainant felt stressed and confused, but does not mean that it may be apologetic not to make sure that you have the correct ticket for the entire journey. The ticket system in London may work differently from the metro in Copenhagen, but we do not think it is relevant to the case as it cannot be assumed that different cities in different countries operate in the same way.

The complainant is residing in Stockholm and have stated that he has previously bought the correct tickets when he has been in Copenhagen – as well as he states that he is in possession of a rejsekort. We are therefore of the impression that the complainant is not entirely unfamiliar with traveling by bus, train and metro in Copenhagen.

According to the above, as well as to previously submitted answers, we maintain our claim for payment of fare evasion ticket no [...] of 750, -DKK"

### **Klageren anfører hertil:**

I am residing in Stockholm, but I am from the UK and only have used the Copenhagen transport system once before where I did purchase the correct ticket via the app - which I demonstrated to the Metro authority. I do have a Resekort, which I was given when I was in Copenhagen, but this does not prove I am highly familiar with the system. I would state that I am not entirely familiar with the Copenhagen transport system, I do not suspect anyone would be on their second time using the system given the size of it and complexity of a new city. But I was familiar enough to know that I was approached by the steward on the way into Femøren station and not afterwards.

I understand the metro steward may be instructed as a rule to approach passengers upon leaving Femøren station, but just because that is the rule it does not mean it was followed or happened. I am unable to see the image you sent me, but from the what you have written, it would appear like it is a copy of the ticket I



was issued. Again, just because the steward wrote this does not explain any of what I have asked you to prove, which was that I was approached after Femøren. I was first approached before Femøren and by the time we had passed Femøren station due to discussing the issue with the Steward, I was of course in the penalty zone based on the ticket I was in possession due to the fact I was not allowed to leave the train. As I explained, I had asked him when at Femøren station to let me leave the train, which he denied.

I conclude that I was approached before Femøren station and should have been allowed to leave the train to purchase a new ticket, which the Steward denied me the chance to do. So far the evidence provided does not prove that I was first approached after Femøren - what simply has been provided is a set of rules the steward should follow, a train timetable and metro map, along with his notes of the ticket. When he wrote the ticket we were past Femøren station due to our length of interactions. Again, my rejection of the ticket fine is that the initial encounter with the steward took place before Femøren and I should have been advised and allowed to leave the train, not held and therefore led to the circumstances of my fine. The steward is unable to remember when he approached me, which is not my fault. Again, I reject the fine given the circumstances of its issue and ask for it to be revoked."

### **Indklagede har svaret afslutningsvist:**

"With the previously submitted logbook etc. we believe it proved that the ticket control took place after the train had left Femøren station and thus had entered zone 04.

The steward has been with us for many years and there has never been questions about his way of ticketing.

On the other hand, we are a little surprised that the complainant did not mention in his very first letter that the steward should have prevented him from getting off the train, but first mentioned it in his second inquiry 36 days later. In addition, we do not understand that if the complainant intended leave the train at Femøren why he did not just do it. Our stewards will never ever prevent anyone from getting off the train.

In his last reply to the board of appeal, the complainant expresses that it was only the second time he used the metro: *"I would state that I am not entirely familiar with the Copenhagen transport system, I do not suspect anyone would be on their second time using the system given the size of it and complexity of a new city"*.

However, we have received travel history from Unwire, the provider of mobile tickets. From the travel history, it appears that the complainant has purchased mobile tickets far more than twice. See attached pdf file.

From Rejsekort A/S we have received further information about the anonymous rejsekort that the complainant explains is his. The card has been used for a total of 19 journeys and was sold on October 22, 2015. We have received travel history that dates back to May 2017."

På ankenævnets vegne



Tine Vuust  
Nævnensformand

