

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer: 2014-0080

Klageren: xx på egne vegne og på vegne af yy
England

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

Klagen vedrører: To kontrolafgifter på i alt 1500 kr. for manglende rejsehjemmel.

**Ankenævnets
sammensætning:** Nævnensformand, landsdommer Tine Vuust
Bjarne Lindberg Bak
Asta Ostrowski

SAGSFREMSTILLING:

Klageren reklameret til indklagede: 30. april 2013

Klagegebyr modtaget i ankenævnet: 17. februar 2014

Sagens omstændigheder:

Klagerne, som var turister i København, rejste den 28. april 2013 med Metroen fra Nørreport st. i retning med Lufthavnen st. Ved kontrol af deres rejsehjemmel efter Femøren st. kunne de ikke forevise gyldig rejsehjemmel, hvorfor de blev pålagt en kontrolafgift på 750 kr. hver.

I følge klagerne havde de ikke kunnet finde skiltning om billetter på Nørreport st. grundet ombygning på stationen, hvorfor de gik ud fra, at de kunne købe billetter om bord på Metroen.

Den 30. april 2013 anmodede de Metro Service om annullering af kontrolafgiften og gjorde ovenstående gældende.

Den 6. september 2013 fastholdt Metro Service kontrolafgifterne med henvisning til selvbetjenings-systemet og anførte desuden følgende: "tickets must be purchased at the main entrance or at the ticket office, which is located at ground level".

PARTERNES KRAV OG BEGRUNDELSER:

Klageren: Ønsker kontrolafgifterne annulleret og har til støtte herfor gjort følgende gældende:

" We are writing to appeal because we believe the extensive refurbishment at norreport station on the date of our fine and our status as tourists entering the station (indeed the metro system as a whole for the first time) constitutes extenuating circumstances.

We did not use 'all other means of transportation in the greater Copenhagen area'. We arrived by plane, took a taxi to our hotel and spent the rest of our stay travelling by bike.

There was **no signage to indicate a self-service system** and as I have already mentioned in our correspondence, there are **no barriers to suggest it**. In London, **there are barriers in the station if you require pre-boarding purchase**, precisely to avoid this situation.

If you (Metro) are carrying out structural works to your station, it is **your responsibility** to ensure customers are **sufficiently notified and directed to the area where tickets can be purchased**. This is exacerbated for foreigners who are visiting a station **for the first time!** Furthermore, I find the implication behind 'you must have gone down the bicycle parking lot' rather unsettling, as if to suggest we were trying to sneak onto the train.

My girlfriend and I are well-paid professionals who were, up until we met your train guards, enjoying a wonderful weekend in Copenhagen. Their curt and aggressive manner towards foreigners – who clearly explained their situation and were ready to buy the tickets on board – is simply not appropriate and ruined the end of our holiday. I have to stress that it has taken me hours to sort through this appeal process, including several email exchanges with

I completely understand that you are trying to set a precedent with your ticket policy but I cannot understand how you cannot read the above as extenuating circumstances. In short, by which indicators were we supposed to know how your system works? All indications pointed to a system where you could purchase tickets on the train. Copenhagen is a huge destination for UK tourists. Nørreport station is a huge hub for these tourists and should be treated as such.

I am, as I have previously stated, more than happy for you to invoice me for the **actual ticket price for two adults** but **I am not prepared to pay a fine for a policy that you have failed to communicate because you were carrying out works at your station**.

IN SUMMARY – EXTENUATING CIRCUMSTANCES

1. This was our first time on the Metro and we are tourists. NB This does not constitute an excuse. However, the following points do provide justification.
2. Nørreport Station was **undergoing significant refurbishment** and there was protective sheeting covering the station exterior.
3. The only entrance we could see took us directly to the station platform level.
4. There was **no signage to indicate a self-service system** and as I have already mentioned in our correspondence, there are **no barriers to suggest it**.
5. In England, **barriers indicate pre-purchase is necessary**, otherwise you can buy tickets on the train.

I am disappointed - yet not at all surprised - to receive another communication from the Metro service that manages to achieve a perfect balance of irrelevance, offensive implications and a failure to address the points from my previous email.

I'm not going to waste more of my time pointing out the superfluous copy in Thomas' email. I find this language misguided and offensive:

In the case in question, the complainants **claim being unaware**, that tickets were needed prior to boarding the train. The complainants entered Nørreport station through a small door from street

level, and **we assume they** have entered through Nørreport S-train station and from there **supposedly walked to the metro**, where they will arrive directly at platform level.

I have given sufficient evidence of how we arrived on the platform. We opened a metal door that had Norreport Station written on it. Inside the door, there were bicycles on either side of the walkway. We walked down 2 or 3 flights of stairs and arrived on the platform, facing the train. Once again, between this door and the train, **THERE WERE NO NOTICES INFORMING US OF THE NEED TO PURCHASE TICKETS**, and certainly **none of the type that Thomas references in his email**.

So, this begs the question, why did we use the entrance? Once again I have to draw your attention to the fact that **NORREPORT STATION WAS UNDERGOING SIGNIFICANT REFURBISHMENT** at the time of our visit. This is the variable that led us to boarding the train through this route, without sufficient signage informing us to purchase tickets. Furthermore, this is the variable that Thomas **HAS COMPLETELY IGNORED** in his email.

It's all well and good for Thomas to cite your policies verbatim and copy and paste signs from the station but he has failed to address **our individual case**.

I stress again that the financial value of the time it has taken for me to process this appeal greatly outweighs the fine. My claim is about the **failure to provide adequate contingency signage**, and the **consequent failure to address this point in any communication from Metro**.

It is these facts that I would like included in the case draft.

I would hope that the board can see this quite clearly. I look forward to hearing their decision.

If the decision does not go in my favour, please take this email as I written request for the following:

- Detailed plans of the refurbishment work undertaken during April 2013
- A break down of the steps taken to provide temporary signage during this period
- A walkthrough of the route we took to the station indicating where these signs would have been placed

A copy of my case draft that I can take to my lawyer "

Indklagede: Fastholder kravet om betaling af kontrolafgiften og har til støtte herfor gjort følgende 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 complainants claim being unaware, that tickets were needed prior to boarding the train. The complainants entered Nørreport station through a small door from street level, and we assume they have entered through Nørreport S-train station and from there supposedly walked to the metro, where they will arrive directly at platform level.

On all metro stations information boards can be found at platform level, advising passengers of the most common need to know information regarding travelling with the metro. The below examples are all from the information boards at Nørreport station, and describes a) where tickets can be bought, b) The risk of getting a fine/penalty charge and finally c) a guidance to the call points, if information or further assistance is needed:



Rejser med Metroen kræver gyldig billet eller kort. Billetter eller kort kan købes i automater på alle stationer. Billetkontrol kan ske både under rejsen, ved udstigning og på stationen efter endt rejse. Ved manglende billet udstedes kontrolafgift efter gældende regler.

Travelling on the Metro requires a valid ticket or travel card. Tickets and travel cards are available from ticket vending machines at the stations. Ticket control may be performed during the journey, when alighting and at the station after the journey has ended. Passengers boarding a train without a valid ticket will be liable to pay a penalty fare.

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.

Contact and further information

You can get additional assistance, by using the yellow dial locations that you find on both platforms and in the trains or you can use the info button on the ticket vending machine. Alternatively www.m.dk and the folder "Rejseregler" provide more information.

The fact that the complainants are tourists from England, where ticket barriers are widely used, is in our opinion not a sufficient reason to avoid familiarizing yourselves with the local system at your destination.

I am sorry to learn, that the complainant finds my language misguided and offensive. It was never intended to be misguided and offensive, but I kindly ask the complainant to take into consideration that English is not my first language.

To our best knowledge, the refurbishment of Nørreport st. took place on the DSB part (S-train and regional trains).

According to our maintenance department, didn't we have any work ongoing on Nørreport Metro station on the date in question – therefore information was available, on the info walls present at the station at platform level.

I apologize that I was not more specific in my previous answer, with regards to the significant refurbishment.

But the metal door used by the complainant, is a normal access route to the station, going through the bicycle parking. As the refurbishment took place at the S-train station, it did not seem relevant to comment upon.

The conclusion is therefore, that there – at the metro station . was no need for contingency signage, as the necessary information was available and visible at platform level – despite the refurbishment taking place at the other end of the station.

Using the access route through the bicycle parking, did not prevent the complainant to find the relevant information.

With reference to the above, we still maintain our claim towards the complainants for paying the two fines of DKK 750.00 each – in total DKK 1,500.00.”

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 bestemmelsestationen. Kontrolafgiften er 750 kr. for voksne.

Den konkrete sag:

Klageren og hans medrejsende steg om bord på Metroen uden billet, da de ifølge det oplyste ikke havde kunnet finde information om billetkøb på Nørreport st. og derfor fejlagtigt troede, at man kunne købe billetter om bord på Metroen.

Klageren og hans medrejsende kunne imidlertid konstatere, at der ikke var mulighed for at købe billet om bord på Metroen. De burde derfor ikke været blevet om bord på Metroen, men skulle være steget ud for at billettere. Klagerne undlod dette og blev i stedet på metroen 6 stop, hvor de blev kontrolleret efter Femøren st.

Det var således korrekt i kontrolsituationen, at Metrostewarden pålagde dem hver en kontrolafgift på 750 kr. for manglende forevisning af gyldig rejsehjemmel.

Ankenævnet træffer herefter følgende

AFGØRELSE:

Metro Service A/S er berettiget til at opretholde kravet om klagerens betaling af begge kontrolafgifter på i alt 1500 kr. Beløbet skal klageren betale inden 30 dage jf. ankenævnets vedtægters § 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
Nævningsformand