

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer: 2015-0162

Klagerne: XX og YY
England

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

Klagen vedrører: 2 Kontrolafgifter á 750 kr. grundet manglende billet. Klagerne havde kun penge i mønter og sedler, men billetautomaten tog ikke imod sedler.

Ankenævnets sammensætning: Nævnensformand, landsdommer Tine Vuust
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SAGSFREMSTILLING:

Klageren reklameret til indklagede: Den 26. maj 2015

Klagegebyr modtaget i ankenævnet: Den 6. juni 2015

Sagens omstændigheder:

Klagerne, som er englændere, rejste den 17. maj 2015 med metroen fra Kongens Nytorv st. til Lufthavnen st. Inden de steg på metroen på Kongens Nytorv st., forsøgte de at købe billet i billetautomaten. Det eneste betalingsmiddel, som klagerne medbragte, var imidlertid lige penge i konstanter herunder sedler. Da billetautomaten på Kongens Nytorv ikke tog imod sedler, steg de derefter på metroen uden at købe billet.

Efter metroen havde forladt Femøren st. var der kontrol af klagerenes rejsehjemmel, hvor de henholdsvis klokken 17.28 og 17.30 blev pålagt en kontrolafgift hver for manglende rejsehjemmel. Som årsag har stewarden noteret: "Intet forevist"

Den 30. marts 2015 anmodede klageren Metro Service om annullering af kontrolafgifterne og anførte følgende:

On Sunday 17 May my wife and I began a journey from Kongens Nytorv to Lufthaven on the Metro. We arrived at around 1700 and looked for the means to pay for tickets. Having spent two days in Copenhagen, and such is the nature of any such travel, we ensured we retained precisely the correct currency to pay our fare (72 kr), which was entirely the cash we had remaining, and we could not pay by credit or debit card.

At Kongens Nytorv station, there were neither personnel nor machines from which to purchase tickets using cash. We travelled a single stop and again sought to find a machine or person from which tickets could be purchased in cash. Unfortunately, it was the same situation and we were unable to purchase a ticket. Not knowing what to do, we boarded the next train and hoped there would be someone on the train or at Lufthaven from whom we could purchase our tickets.

We saw no signs making clear that there is no means to buy a ticket on the train or at the end of a journey, or advising that boarding a train without a ticket is not allowed or could result in a fine.

Should the station have closed circuit television, it will be possible for you to view us inspecting the machines and discussing what to do.

When we did see what we thought to be a guard, I approached him to pay with the cash we had ready. We showed the gentleman our cash and asked to buy tickets as we had not been able to do so until – we thought – this point. It was only at this time that we discovered purchasing tickets on the Copenhagen Metro train is not possible and we were subject to a “fare evasion” penalty, despite the fact we had done all we could to pay the fare and had been unable to do so until this point.

After lengthy discussion with my wife, who tried to explain our repeated attempts to buy tickets, find any personnel or a machine that would accept cash, the gentleman advised us there are no staff and directed us to what appeared to be an emergency button on the train and said it could be used to provide information about our journey (which would have already begun should we have known this and sought to make use of it).

We explained, and I must reiterate this point, we did not see any signs explaining that paying cash was not possible at unmanned stations, or that boarding a train without a ticket will result in an “fare-evasion penalty” regardless of any circumstance, including being unable to purchase tickets without a credit or debit card, or without any personnel able to assist. Similarly, we did not see, and still do not know, if the machine that looked like it was for emergency use on the train are in use at Metro stations; we certainly did not see any.

Such information points on the Metro are not obvious.

We live in London, and whilst we respect the two systems are different, the London system:

- is very clearly signposted;
- always takes cash at London Underground stations, even if they are unmanned;
- has information machines that are huge, white, very clearly marked, and located where they will be most obvious, including on the platforms;
- on over ground trains that are unmanned, it is always possible to buy your ticket from the guard – with cash; and

- possible to pay for tickets on arrival at the mainline station where the train terminates.

In summary, we feel the imposition of these tickets for “fare evasion” are unjust and unfair as, by definition, we did not try to evade paying any fares. On the contrary, we actively sought to pay at two stations and with a person we thought to be a guard as soon as possible after we became aware of his presence. We remain happy to pay that amount and still have the kroner remaining.

We can provide photographs of the exact cash at the time we were at the airport with the Metro personnel, and can provide details of our flights or any such materials that will demonstrate that we were not seeking to avoid any fare.

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We had only the exact fare in cash available to us. It was not clear that cash purchase of tickets was not possible.

Metro Service fastholdt den 8. juni 2015 kontrolafgifterne og anførte som begrundelse 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 before boarding the train. It is your responsibility to ensure that your ticket or clip card is correctly stamped and that it is valid for the entire journey. Furthermore, you must be able to show the ticket or card in case of a ticket inspection. Our ticket machines do not take cash notes, only cash coins. Therefore it is expected that you change notes for coins. Yellow

call points can be found on all of our ticket vending machines, as well as 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.

Considering the above, you will be charged the full amount of the fine, which we request that you pay as soon as possible. Enclosed you will find a new payment form.”

PARTERNES KRAV OG BEGRUNDELSER OVER FOR ANKENÆVNET:

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

“My husband and I travelled to Copenhagen on 16/05/15 and returned 17/05/15. We bought our train ticket at the airport from the ticket officer to get to Kongens Nytorv but on our return to the airport the following day from Kongens Nytorv no ticket office was available/open so we could not seek help to buy our tickets and the machine would not accept the cash we had (notes and coins). We had kept exactly the correct fare to buy our return journey in cash on departure (and showed to the ticket man and as per attached photo). We looked everywhere at the station to find help and found no signs to direct us or advise that tickets must be bought before you board the train. Our initial complaint to Metro has been returned stating their policy which is for the passenger to be in possession of a ticket before boarding the train but this policy is not made known to travelers. It might be the policy and might be known to locals or frequent users but we had no clue on our second and last journey that this was the policy. We are being discriminated against as a foreign tourist who does not know Metro’s policy and cannot read Danish. Nowhere on the station, platform or train was there any clear English sign to state the policy and you will be fined if you do not possess a valid ticket. Nor is there any sign on how to get travel assistance or help in purchasing a ticket if you need it. I don’t know if there were any signs, but I feel it must be said – information points on the metro are not obvious. We had to go to the airport to get our flight and could not find any help so we boarded the train hoping to see a member of staff that could help us.

We live in London and it is very clearly signposted and always possible to pay cash. If you had an issue buying your ticket because the machine did not accept your cash you would not be fined. On overground trains that are unmanned it is possible to pay for tickets at the station where the train terminates and/or purchase tickets from the guard on the train and at every station stop. On the Tube you need a ticket but signs are clear at stations and on every train carriage to advise what to do so all travelers know the policy and are treated fairly and equally. Even our letter from Metro Service says your website www.abtm.dk has information. protocols and previous rulings but your site is only in Danish. I have tried to get information by emailing you to then decide if I wanted to do a further complaint but this was not possible and again is unfair. I don’t have the same detail available to me to make an informed decision so I have had to pay your fee (plus my bank charge) to do this complaint also.

So at Kongens Nytorv station, there were neither personnel nor machines from which to purchase tickets using cash. We travelled a single stop and again sought to find a machine or person from which tickets could be purchased cash. Unfortunately, it was the same situation and we were unable to purchase a ticket. Not knowing what to do, we boarded the next train and hoped there would be someone on the train or at Lufthaven from whom we could purchase out tickets. Should

the station have closed circuit television, it will be possible for you to view us inspecting the machines and discussing what to do.

We did see what we thought to be a guard and my husband approached him to pay. Unfortunately, we discovered that purchasing tickets on the train is not possible and we were subject to a "fare evasion" penalty, despite the fact we had done all we could to pay the fare.

In summary, we feel the imposition of these tickets for "fare evasion" are unjust and unfair as, by definition, we did not try to evade paying any fares. On the contrary, we actively sought to pay at two stations and with a person we thought to be a guard as soon as possible after we became aware of his presence because we were unable to buy using cash from the station machine, the stations are unmanned and we could not get any prior assistance."

Indklagede: Fastholder kravet om betaling af kontrolafgifterne og har til støtte 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 common 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 needed 72 DKK in cash (One banknote and some coins), which was the exact amount for the needed tickets for travelling from Kongens Nytorv st. to the airport.

The complainants claim that it was not possible for them to pay for the ticket using cash. Furthermore the complainants claim, that there were no signs on the station advising them, that tickets must be bought before you board the train. As they were not aware, they feel they are being discriminated against as foreigners not reading Danish.

It is correct that our ticket vending machines do not accept banknotes, but it is possible to pay with coins and credit cards.

On each station you find an information wall with information in both English and Danish. Among the information, the following is stated:

Ticket information

Tickets are available from the ticket vending machines for journeys within Greater Copenhagen and for destinations in Denmark and Scania (Skåne) in Sweden. Major Credit cards and Danish coins can be used. Please read more about different types of tickets below and on www.m.dk.

and

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.



Henvendelser til Metroens kontrolrum kan ske fra opkaldsstedet – tryk INFO. Ved akut fare – tryk ALARM.

Inquiries to the Metro control room may be made from the call point by pressing INFO. In case of emergency, press ALARM.



Metrostationer og Metrotog er kameraovervågede af hensyn til de rejsendes sikkerhed og tryghed.

For passenger safety and security Metro stations and trains are under video surveillance.



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.

Based on the above, we are of the opinion that there are sufficient signage on the station - even though the layout must be different from London – and we are therefore maintaining our claim towards the complainant for paying the two fines of 750 DKK each."

Hertil svarede klagerne følgende:

"Our response addresses specific inconsistencies made in the letter from Metro Service (red.), as well as making clear the situation, that we did not evade paying a fare, and suggestions for improvement to signage to make clearer the situation for those who do not know.

It is not clear that public transport in the greater Copenhagen area is solely self-service. We purchased tickets at the airport from a member of staff to travel into Copenhagen city.

It is not clear that it is not possible to purchase a ticket on the train, i.e. that the passenger is therefore responsible for holding a valid ticket before boarding the train.

We sought several times to purchase a valid ticket but were unable to do so as signage or any other instruction does not make this clear in reasonable fashion.

We only became aware that Copenhagen Metro tickets does not take cash notes on arrival at the station when we tried to use what remaining cash we had saved for this purpose (exact 72DKK as per our photo previously supplied). This seems an antediluvian system when every-day technology allows notes to be processed. We did not see any machines that allow notes to be converted to coins at the station. If it is not possible to use notes, such machines should be provided.

Whilst yellow call points may be available, they are not obvious. We spent time looking and investigating how to proceed. Either signage is bad or they are not easily identifiable (and what if people are blind). Images sent to us appear to be from a website rather than in situ. Regardless, for us to have read this, we would have had to know where it was located – which we did not, despite looking at length for information.

Additionally, the need to press the button for support reads like it is for technical, rather than passenger, help. Certainly the user would need to be aware that the Metro Control Room deals with ticketing issues. To us, a control room deals with emergencies or technical matters (i.e. we are stuck in a lift or there is a fire). Even if we had found such a sign, it is not one we would have acted on in the way that has now been described (i.e. to purchase a ticket).

Again, we need to reiterate that we approached what we believed to be guards (i.e. responsible for supplying tickets whilst on the train) to pay – evidenced by our having the exact fare ready in hand – the precise cash we had saved as we were travelling to the airport to leave. As previously advised it is possible in London to buy tickets on the train from the guard.

The issue at hand is that we have been charged with fare evasion. This is simply not the case. As outlined and stated many times, we sought to purchase tickets at the station and from what we thought were guards who could supply them. We did not seek to evade paying a fare and tried to do so; we were unaware that the system is set up in such a way that it is not possible to purchase tickets with cash, and that there is insufficient notice making this clear. As it was, there is insufficient notice making clear these details and we tried numerous times to pay. It therefore cannot be considered fare evasion.

Finally, with all this being the case, we suggest the following steps to improve peoples' visit to Copenhagen:

- Large signage at ticket machines and, especially, on train doors making clear a valid ticket is required or a penalty will be enforced, and how to purchase. This could not help but be seen, particularly on the doors.
- Make general signage/help points far more clear and obvious.
- Ensure busy stations in tourist areas are staffed.

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Hertil har indklaget anført:

"The images sent is taken directly from the .pdf-file, that was used to print the information on the information boards.

We understand the complainant's frustration, but are of the opinion that the signage is sufficiently clear:

- The lack of barriers – as known from the UK – indicates that you are In a self-service system.
- Information is available on all stations in both Danish and English, and can be found on the information wall near the ticket vending machine.
- Information is given inside the train - in both Danish and English – that boarding a train without valid ticket will be liable to pay a penalty fare
- The call-point have two buttons each, labelled "Info" and "Alarm". We are not aware of how the functionality is in London, but here information of call-points is given both at stations and on board trains.

As the complainant did travel without holding a valid ticket, a fine / fare evasion was issued.

We are still of the opinion, that the needed information was available, and that the fines were issued on a correct basis

Therefore our claim towards the complainant is still maintained."

ANKENÆVNETS BEMÆRKNINGER:

Retsgrundlaget:

Ifølge § 2, stk. 2, i lovbekendtgørelse nr. 1249 af 11. november 2010 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.

Den konkrete sag:

For rejse med den kollektive trafik gælder som udgangspunkt selvbetjeningsprincippet, hvorefter passageren er ansvarlig for selv at sørge for at have gyldig rejsehjemmel inden påstigning på metro. Klagerne valgte at stige på metroen, selv om de vidste, at de ikke var i besiddelse af billetter.

Klagerne kunne ved kontrollen den 17. maj 2015 derfor ikke forevise gyldig rejsehjemmel, og kontrolafgiften blev dermed pålagt med rette.

Ankenævnet har tidligere udtalt, at der ikke er grundlag for kritik af den manglende mulighed for at betale med sedler i billetautomaterne på de danske stationer, hvilket skyldes kriminalpræventive hensyn. Der er mulighed for betaling med mønter og Dankort, Visa Dankort, Visa Electron samt Mastercard i Metroens billetautomater.

Metro Service har i sagen henvist til, at der på perronen var oplysninger på engelsk om, at man skal have gyldig billet. Imidlertid er informationen anderledes på engelsk end på dansk, og det er i den engelske tekst udeladt, at det er inden påstigning, at passageren skal have gyldig billet, således som det står anført i den danske tekst. Ankenævnet har i tidligere afgørelser påpeget dette over for Metro Service.

Imidlertid kunne klagerne i metroen hurtigt have konstateret, at billetter ikke kunne købes om bord, og de burde ikke være fortsat deres rejse uden billet. De blev kontrolleret 6 stop senere, efter metroen havde forladt Femøren st.

Det bemærkes, at pligten til at betale kontrolafgift ikke er betinget af, om passageren bevidst har forsøgt at unddrage sig betaling for billetten.

Herefter, og da dette er et område med oplagt mulighed for omgåelse af reglerne om at betale for gyldig rejsehjemmel, findes der ikke at have foreligget sådanne særlige omstændigheder, at klagerne skal fritages for kontrolafgiften.

Ankenævnet træffer herefter følgende

AFGØRELSE:

Metroselskabet I/S v/Metro Service A/S er berettiget til at opretholde kravet om klagerenes betaling af hver en kontrolafgift på 750 kr. Beløbet skal klagerne 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 15. december 2015



Tine Vuust
Nævnensformand