

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer: 2011-0164

Klageren: XX
København

Indklagede: Metroservice A/S

Klagen vedrører: Kontrolafgift på 750 kr. for manglende klip samt adfærd i forbindelse med kontrollen og efterfølgende sagsbehandling.

Ankenævnets sammensætning: Nævnensformand, landsdommer Tine Vuust
Bjarne Lindberg Bak
Ingrid Dissing
Claus Jørgensen
Torben Steenberg

SAGSFREMSTILLING:

Klageren reklameret skriftligt til indklagede: via Udenrigsministeriet den 1. juli 2011.

Klagegebyr modtaget i ankenævnet: 2. august 2011.

Sagens omstændigheder: Den 16. juni 2011 rejste klageren fra Nordhavn station i zone 01 til Lufthavnen i zone 04. Den sidste del af turen foregik med Metro.

Ved kontrol af klagerens rejsehjemmel fra Kastrup Metrostation til Lufthavnen blev hun pålagt en kontrolafgift på 750 kr. Den af klageren underskrevne kontrolafgift er udstedt kl. 17:20, og den elektroniske kontrolafgift er registreret kl. 17:39 og er udstedt på baggrund af udløbet rejsehjemmel.

I en note på den elektroniske kontrolafgift har stewarden skrevet følgende: "**xxx kom in til cph [Lufthavnen Metrostation] och han ville att jag skulle skriva avgiften, men damen var helt utom sig och började anklaga oss om dvs saker, under tiden uppstår ett bråk, och det slutar med att jag blir anklagad för racism men hursomhelst, händelserappor**".

I forbindelse med kontrollen tog metrostewarden et billede af klagerens 2-zoners klippekort stemplet een gang kl. 13:15 i zone 01 sammen med klagerens CDR – Corps Diplomatique Registration kort. Dette er et identitetskort, som udstedes af Udenrigsministeriet til udenlandske herboende ansatte.

I brev af 22. juni 2011 skrev klageren til HR-afdelingen i Unicef, hvor hun var ansat, for at anmode om assistance til at klage til MetroService over det passerede. Klageren oplyste, at hun var blevet kontrolleret om bord på metroen og havde fået en kontrolafgift, fordi hun havde klippet 2 gange på sit klippekort i stedet for 3 gange. Metrostewarden havde forlangt at se hendes pas og få oplyst hendes fødselsdato. Klageren havde nægtet at udlevere dette, fordi stewarden ikke kunne forklare, hvorfor hendes nationalitet og alder var relevant.

Da stewarden havde truet med at tilkalde politiet, og at hun derved ville miste sit fly, havde hun givet ham sit CDR-kort. Dette var ifølge stewarden ikke tilstrækkeligt og han ringede efter politiet, da de nåede til Lufthavnen station.

På perronen havde stewarden bedt klageren udfylde en formular, som klageren anmodede ham om at oversætte. Stewarden havde løjet for hende og oversat "CPR-nummer" med "fødselsdato". Hun tilbød derpå at give sine CDR-cifre svarende til et CPR-nummer. Imens begyndte en anden passager at tale til stewarden, og da denne drejede sig væk fra klageren og begyndte at konversere med passageren, fremsatte klageren indvendinger herimod. Dette fik passageren til at sige følgende: "you are getting a fucking ticket so you can fucking wait." Stewarden talte blot videre med manden, og da klageren igen protesterede og bad passageren vente på sin tur, væltede passageren hende om på gulvet.* Beskrevet af klageren således på engelsk: "grabbed my right shoulder and threw me onto the platform floor".

Stewarden hjalp hende ikke og lod passageren tage en Metro væk derfra. Stewarden svarede hende ikke på, hvorfor han ikke havde hjulpet hende men gav i stedet hendes ID-kort til en kvindelig steward, som var ankommet, og begyndte at tale med en anden passager.

Eftersom klageren var rystet og vred, sagde hun til den kvindelige steward, at det hele skyldtes, at klageren var udlænding, og at den opførsel, hun var blevet udsat for, måtte være racemæssigt motiveret. Dette fik den kvindelige steward til at udbryde: "Fucking look at me. You can't call me a fucking racist."

Klageren bad herfter om at få sit CDR-kort tilbage og begyndte at gå mod lufthavnsterminalen. Den mandlige steward kaldte hende tilbage, men hun svarede, at hun ikke kunne klare et minut mere af deres misbrug. Stewarden sagde, at politiet kom efter hende.

Da klageren straks efter fandt ud af, at de havde beholdt hendes klippekort, købte hun et nyt i DSB billetsalget og fik oplyst, at man skulle klippe 2 gange fra Nordhavn station. Den følgende dag ringede hun til MetroService Kundeservice for at bede om videooptagelserne fra hændelserne. Hun blev bedt om at rette skriftlig henvendelse, hvilket hun nu havde gjort og afventede MetroServices bekræftelse og handling. Medarbejderen havde oplyst, at der var registreret en sag på hende for at rejse på en udløbet billet, hvilket forurologede klageren, da det ikke var den påstand, der var blevet fremsat den foregående dag.

Unicef videresendte klagerens brev af 22. juni 2011 til Udenrigsministeriet, som i mail af 1. juli 2011 videresendte brevet til MetroService til videre foranstaltning.

Den 12. juli 2011 svarede MetroService klageren således:

"The Copenhagen metro works as do all other Copenhagen public means of transport as a self service system, which means that it is the responsibility of the traveler to provide himself with valid card or ticket before starting his journey. Valid card or ticket must be preserved throughout the entire journey and must be produced at any time if requested by Metro Service personnel. This appear from the Metro's travel rules

which are shown on our website www.m.dk, and this information is also available at the information boards at all Metro stations and in the folders also to be found at all stations.

The journey between zone 1 (Centrum) and zone 4 (the airport) covers 3 zones in all, namely zones 1, 3 and 4. From the photo taken of your travel document in connection with the actual ticketing it appears that you have used 1 clip of a 2-zone blue clipcard. Thus 1 zone is lacking, which is why it must be concluded that the fare evasion ticket is issued correctly.

Therefore the issue is not whether the Metro steward has shown himself willing to enter into a constructive dialogue or to listen to the complainant's explanation; on the contrary the steward is correctly observing the travel rules which prescribe that travelers who do not possess valid travel document should be issued with a fare evasion ticket.

Moreover I would like to draw your attention to the fact that the steward also did not consider the incident to be a positive experience, which is why he afterwards made an incident report to Metro Service's health and safety department. According to the report you were not co-operative, and as the steward briefly turned his attention to another passenger at Airport station you became very agitated. By accident you spat this other passenger in the face with the immediate result that the latter became somewhat annoyed and pushed you so that you lost your balance and fell over.

Our steward clearly regards the entire situation as an unfortunate incident, not as an assault.

It appears from your letter that the steward wanted to call in the police because he was not satisfied with the ID that you produced. The steward informs us that his intention to call in the police was due to the fact that you were not co-operative and at first refused to show any kind of ID.

As to the translation of cpr.nr. we are legally allowed to ask for information of date of birth which is the reason why the steward asked for this information.

If anything further is to be obtained from use of CCTV (video surveillance) you must report the matter to the police.

Referring to the above mentioned we are compelled to maintain the fare evasion ticket; we enclose a new payment form which we kindly ask you to pay as soon as possible.

Should you wish to appeal this decision you should apply to 'Ankenævnet for bus, tog og Metro' which is the authority that deal with matters like these.

You can find further information about 'Ankenævnet' at www.atbm.dk.

If we do not receive written notice from Ankenævnet confirming that you have appealed your case our standard reminder procedure will continue by July 30th 2011."

Klageren har under nærværende klagesag oplyst, at hun den 17. juni 2011 ringede til Metroservice for at klage over det passerede og fik oplyst, at hvis hun skrev en mail med overskriften "Urgent" og anmodede om udlevering af videroptagelser, ville Metroservice kontakte politiet for at få disse udleveret.

Klageren har gjort gældende at hun derefter sendte en mail til Metroservice, men den er ikke fremlagt i sagen og fremgår ikke af det materiale, som ankenævnet har modtaget iøvrigt. Metroservice gør gældende, at første skriftlige henvendelse i sagen var den 1. juli 2011 fra Udenrigsministeriet.

PARTERNES KRAV OG BEGRUNDELSER:

Klageren har klaget over 6 forhold, som gengives her:

- 1) Kontrolafgiften
- 2) Hvilken for form for ID-kort Metroservice accepterer
- 3) Stewardens usandfærdige oversættelse af "date of birth"
- 4) Stewardens undladelse af at tage ansvar for passagerernes sikkerhed
- 5) Anmodning om udlevering af videooptagelser
- 6) Uhensigtsmæssig og aggressiv opførsel af den kvindelige steward

Klageren har anført følgende vedrørende klagepunkt 1):

Metroservice gave me three completely different stories about what I had supposedly done wrong. First story: 16/06/11 - a male steward said I needed three clips to travel from Nordhavn to Lufthavnen, and I had two. Second story: 17/06/11, The Metro customer service whom I called the next day said that I was charged with travelling on an expired clip card. Third story: 12/07/11 - Metro Service written response to my complaint, apparently I had only one clip against a two-clip requirement.

The Metro steward who began this harassment against me had kept my clip card, so puts me at a complete disadvantage in countering any story that the Metro has fabricated against me, as I had paid the correct fare required. There was no motivation at all on my part to evade payment. I had plenty of unused clips on my card. I have travelled the same route dozens of times and know perfectly well what the fare payment is.

With three different stories as to my alleged "fare evasion", I think this only confirms the spuriousness of the charge.

I am aware of the Metro Service rule that I have responsibility of paying the correct fare and having the ticket in hand as proof of payment. On 16 June 2011, I made **two clips** on my two-zone clip card at Nordhavn for my journey to Lufthavnen. In every dealing with the Metro Service, I was given a different reason as to why my actions that day amounted to fare evasion.

1. On 16 June 2011, a Metro steward informed me that I needed **three clips** to travel from Nordhavn to Lufthavnen, and since I had **two clips**, this meant I had failed to pay the correct fee.
2. On 17 June 2011, the Metro customer service whom I called said that I was charged with travelling on an **expired clip card**.
3. On 12 July 2011, the Metro Service official written response to my complaint said that I had made only **one clip** against a **two clip** requirement.

In its counter reply, Metro Service A/S acknowledges these different stories were given, but says: "all the explanations are actually correct.

At a minimum, I think it is reasonable to expect that the Metro to be clear and consistent when making a serious allegations against passengers. In my case, the Metro has been neither, and the various stories and dates that have been given to me (and the insistence that all of these are consistent) add up to a rather Kafkaesque attempt to extract a fine is based on explanations that are riddled with confusing rationalisations.

If is the Metro steward made a mistake citing the reasons for the fine in the first place (and this seems obvious given the steward's original charge compared to the confirmation that only two are required between Nordhavn and Lufthavn stations) then it would have been better to own up to a mistake rather than insist on compounding it.

Vedrørende klagepunkt 2): The steward said my Corps Diplomatique Registration (CDR) card, issued by the Ministry of Foreign Affairs to Danish non-nationals working in this country (in lieu of a CPR card), was not acceptable proof of identity. He demanded that I show my passport, which I refused, because he could offer no explanation why my nationality was of any relevance to the incident. To declare that a CDR card, issued by the Danish Government is not acceptable proof of identity for the Metro Service is unreasonable. At no point did the Metro steward ask me for ID "for instance in the form of a passport". He concluded that since I was on my way to the airport I must have my passport with me and did not offer any other alternate forms of ID (he did not ask for a CPR or sygesikringsbevis, which MetroService has explained is required of Danish citizens. The steward had automatically concluded that I did not fit into this category).

The steward told me that if I did not produce my passport, he would call the police and make me miss my flight. When I showed him my Corps Diplomatique Registration (CDR), he said that was not acceptable because it did not show my date of birth. As a result, he carried out his threat to call the police. Since I had shown valid Danish government identification, I asked why my nationality (passport) and age (date of birth) were relevant in establishing identity, but he could not say.

MetroService confirms that they accepts the CDR as proof of ID, and further says that the steward accepted it too. However, his behaviour would seem to indicate the contrary:

- The steward insisted that further information was necessary, specifically date of birth. He said this would be established by my passport. This would indicate he felt the CDR was not sufficient.
- Because I declined to show my passport after I produced my CDR, the steward called the police.

MetroService says that passengers are required to show ID "if a steward asks for it". But there seems to be no way for non-Danish residents of Denmark, like myself, to satisfy the MetroService ID requirement in absence of a passport. MetroService is mistaken in their expectations that tourists (and in my case, a non-Danish resident) carry their passport while they go about their business locally, especially in a free and democratic country.

If, as MetroService says, it is "perfectly normal" for the Metro steward to threaten passengers with the police (and additionally in my case, the promise that I would miss my flight), if they don't present acceptable ID, then I suppose I have to accept as routine, abuse by uniformed staff who do not apply the Metro's own rules on what constitutes acceptable ID – in my case, my CDR.

Vedrørende klagepunkt 3): The steward lied when I asked him for assistance on filling out a form related to the fine he wanted to impose on me. He said CPR translated into "Date of Birth". Though I do not speak any Danish, I know that CPR translates into "Civil Registration Number", for which my CDR number is the official equivalent. I confirmed later that Date of Birth in Danish would have been "fødselsdato". I provided a CDR card, and there was nothing on the form that required me to provide a Date of Birth. The Steward could not explain why knowing my age was relevant to the incident. The Metro Response said "we are legally allowed to ask for information of date of birth". My question as to why my age is relevant to the matter remains unexplained, and the steward's untruthfulness in his translation of a form also remains unaddressed.

MetroService confirms that "it does not specifically say on the receipt for the fare evasion that the date of birth is required information". Therefore, clearly, the steward's translation of "CPR" into "Date of Birth" was not truthful. MetroService confirms that the CDR is acceptable proof of identification, and therefore it should have sufficed as equivalent of CDR number required on the receipt.

There was no need to lie, and Metroservice's explanation on the meaning of various digits that appear in the CPR, which they feel justifies the Metro steward's translation, is actually irrelevant.

Vedrørende klagepunkt 4): On the Lufthavnen Metro platform, the steward allowed a male passenger who interrupted our discussion to verbally abuse me: "You are getting a fucking ticket so you can fucking wait" he said. Instead of diffusing this aggression, the steward allowed the incident to escalate. The man grabbed me, and then threw me to the ground. The steward did not assist me, or ask me if I was okay. Instead, he continued to assist the man with his query then allowed him to leave the station on the awaiting train.

The man had physically attacked me and could easily do the same to others. The Metro steward's inaction, to my mind, was the exact opposite of someone who should be there to protect passengers from harm. However, the Metro Service feels this is not their responsibility at all. According to the written response the attack against me was an "unfortunate incident" and "not an assault". The Metro Service response claims that I "accidentally spat this other passenger in the face with the immediate result that the latter became somewhat annoyed and pushed you so that you lost my balance and fell over".

The written response attempts to minimize the seriousness of events, put the blame on the victim, and manufacture a bizarre justification for the attack. The Metroservice is silent in response to my specific complaint that in failing to act in the interests of passenger safety in my case, the steward was in dereliction of his duties and responsibilities as a uniformed employee of the Metro Service. I think everyone who uses the Metro is entitled to feel safe, and the Metroservice response does not appear to agree. This is wrong and should be addressed.

The description by Metroservice of what transpired on the platform is inaccurate. I was on my way to catch a plane. [They] suggest I provoked fight by spitting at someone and then putting myself in harm's way. Both are simply not true. What is absent from [their] analysis is any acknowledgement that the other passenger's behaviour was antisocial and violent, that I was physically harmed.

I find it incredible that visible uniformed Metro authorities are not obliged to assist injured passengers, or address a situation where they are witness to violence on Metro property. But according to [them], the Metro steward has "no official authorisation to intervene". If I can apply what this means in practice, in my experience: this means if a violent incident occurs on Metro property, it is normal for Metro staff to allow the perpetrator to continue on their journey, and to refuse basic assistance to the injured passenger. I would like the Appeal Board to confirm that this is the case, and I will adjust my expectations of the Metroservice and its staff accordingly.

[They] say the Metro steward called the Airport Police to assist me after I was physically struck by the other passenger – however this is not true. As I said earlier, the steward summoned the police because he found my CDR insufficient and wanted to see my passport – neither of which I felt was justifiable. The reason why I left the scene was that Metro employees were not concerned with my distress or injuries (these I had to attend to immediately), and a complaint I made verbally to another Metro staff was met with further abuse (see below). The fact that the call to the Police was cancelled when I left (according to [their] letter), confirm that the Metro steward had no intention of stopping the violent passenger who was shown to be risk to others.

Vedrørende klagepunkt 5): When I wanted to find out how to obtain the video, the clear and repeated instructions of the Metro customer service agent on 17 June 2011 was to put it in writing in an email and write "urgent" on the subject line, since time was of the essence in retrieving this footage, and that Metro would have to request from the Police. This is what I did on two occasions, both of which were ignored by the Metro until the Ministry of Foreign Affairs intervened on

my behalf. By then too much time had elapsed for the second set of instructions telling me to go to the police directly, to be of any effect.

Finally, in the response dated 12/07/11, the Metro service said that if I wanted the surveillance tape, I have to report the matter to the police. My decision to follow the Metro Customer Service advice to go through their channels to obtain the videotape has obviously put me at a great disadvantage. More than a month has gone by since my attack on Lufthavnen Metro platform and the chances of recovering the images have diminished considerably.

Vedrørende klagepunkt 6): I was bruised and shaken from being attacked and falling. The male steward began serving other passengers while another Metro steward (female) began examining my CDR card. I complained verbally to her and questioned specifically why neither she nor her colleague came to my aid when I was attacked, and why they let the attacker leave with impunity. She did not answer, so I suggested that the Metro chose not to, since foreigners probably appeared as easy targets. Instead of addressing my distress at any point, this female inspector said "Fucking look at me - don't you fucking call me a racist". I believe the female steward's behaviour was aggressive and inappropriate and that this should be addressed by the Metro service. The Metro service response failed to address this part of the complaint. An implicit endorsement of this type of behavior of Metro employee to passengers is wrong, and should be corrected.

While I understand from Metro's letter that Metro stewards are not permitted to assist passengers who experience aggression from other passengers, there is nothing in Metro's comments that indicate that the Metro has authorised its staff to use profane language to address passengers and dismiss serious concerns that are brought to their attention.

Indklagede: Fastholder kravet om betaling af kontrolafgiften og har vedrørende de øvrige klagepunkter gjort følgende gældende:

Vedrørende klagepunkt 1): Like all other means of public transport in the Copenhagen area, the Metro is a self-service system, leaving the full responsibility of having the correct ticket up to the individual passenger. A valid ticket must be obtained prior to commencing the journey and must be kept at hand by the passenger for the entirety of the journey, so that it can be presented at the request of a Metro steward.

In the case in question, several conditions have caused the presented clip card to be invalid for the undertaken journey.

It has been stamped only once – equalling 2 zones. From Nordhavn St. (zone 1) to Lufthavnen St. (zone 4) you will need 3 zones, which on a 2-zone clip card would require two clips/stamps. The presented clip card was stamped in zone 1 at 1.15 pm on May 16th, 2011. One clip on a 2-zone card is valid for 1 hour, which is why at 5.16 pm on the same day the clip was expired (by no less than 3 hours). From the clip card that was presented in the ticketing situation, it is evident that it had not been stamped twice at Nordhavn station on June 16th, 2011. On the date in question, the card had been stamped once at 8.45 am in zone 2 and then once more at 1.15 pm in zone 1. These two separate stamps expired at 9.45 am and 2.15 pm respectively. Furthermore, it is evident from the two stamps that they were created by two different machines in two different zones.

Therefore, the passenger has not been given contradictory information seeing as all of the explanations are actually correct.

It is not possible to have a comment from the steward in question regarding keeping the "klippe-kort", and his colleague recalls no such thing, which would be contrary to the guidelines from management.

Vedrørende klagepunkt 2 og 3):

When the steward checked the ticket, he asked for ID in the form of for instance a passport. Initially, the complainant refused to show any form of ID. The steward then informed the complainant that if she was unwilling to show some form of ID, he would call for police assistance. This is perfectly normal procedure when Metro stewards ask to see ID in the form of for instance a passport, which is the form of ID typically carried by tourists who are not in possession of a Danish medical card (sygesikringsbevis). In this case, the complainant showed the steward a diplomatic registration card with a photo, which then he accepted as valid ID. This is not a case of demanding that everyone must carry their passport when using public transport in Copenhagen, but a passport can be used as ID by tourists who are unable to establish their identity by means of a sygesikringsbevis or other Danish personal documents.

In the complainant's email response of September 6th, 2011, she notes that the steward demanded to see her passport – in the latest email from the complainant, she writes that "At no point did the Metro steward ask me for ID 'for instance in the form of a passport'". When a member of our staff checks a passenger who is not in possession of a valid travel document, the passenger is obliged to disclose when he or she was born (date, month and year). Asking for a CPR number makes sense as the first 6 digits of a Danish CPR represent the birth date of the person to whom it belongs. Furthermore, the steward may rightfully ask for evidence that the name and birth date that the passenger supplies actually correspond. A passport is one example of documentation that contains both the name and the date of birth of its owner. The steward's right to demand to see ID is warranted in part 3 of § 23 of the Jernbanelov (Railway Act).

On to the issue of whether or not the steward lied to the complainant. Translating CPR to 'Date of birth' is arguably correct. The steward asked for the complainant's date of birth, since only Danish citizens are given CPR numbers, wherefore the complainant did not have one. The first 6 digits in a Danish CPR are made up of the date of birth of the person to whom the CPR belongs.

It is correct that it does not specifically say on the receipt for the fare evasion ticket that date of birth is required information, but since the first 6 digits of a CPR number contain this information, it is implied. This is also evident from the Metro Travel Regulations. Furthermore, we refer to 'Jernbaneloven § 23, stk. 3' which states that we can establish rules stating for instance that passengers who are not in possession of a valid travel document (in the form of either a ticket or a card), are required to show ID if a steward asks for it, so that the identity of the passenger can be established. We have established such a rule, stating that the passenger as a minimum is required to inform the steward of his or her date of birth (date, month and year).

Vedrørende klagepunkt 4):

The complainant states that the Metro steward did not come to her defence when she was 'assaulted by another passenger'. As previously explained to the complainant, the incident happened when another passenger came over to ask the steward a question. The steward reacted to being asked a question, which made the complainant move to stand between the steward and the other passenger while yelling at them. This caused the actual conflict where the complainant spat at the other passenger (deliberately or not), causing the other passenger to react physically by pushing

the complainant. The Metro steward has no official authorisation to intervene, which is why he called in the Airport Police – unfortunately, the complainant decided to leave the station prior to their arrival. The steward subsequently cancelled the request for police assistance.

We never claimed that the complainant provoked the third party, thereby 'putting herself in harm's way'. We wrote: "...The incident happened when another passenger came over to ask the steward a question. The steward reacted to being asked a question, which made the complainant move to stand between the steward and the other passenger while yelling at them". Our employees have no police authorisation and that is why our steward called the police, as mentioned in our first email.

According to the incident report written by the stewards concerning the episode, the complainant was told that if she did not present some form of ID, the police would be summoned. At this point the steward had not yet called the police. When the situation between the complainant and the other passenger began escalating, the steward called for police assistance through his radio by way of the Metro control room. Seeing as the complainant decided to leave the station prior to the arrival of the police, the steward ended up cancelling the request for assistance.

Our stewards go through several courses in both conflict resolution as well as professional conduct towards our customers. However, if a ticketing situation comes to a head and our steward is verbally insulted, as was the case in the situation in question, one natural response might be to retort. The incident was subsequently reported to our safety department.

Vedrørende klagepunkt 5):

Furthermore, the complainant writes that she requested the video surveillance recording from the station and that the customer service employee she came in contact with over the phone on the day following the incident had told her that the video surveillance was not available by request from us, but had to be requisitioned via the police by means of making a formal complaint or notification to them. The complainant was informed that if she preferred to complain about the steward, such a complaint would have to be directed to the Metro customer service department in writing.

It is correct that when we sent a written response on the 12th of July, 2011, the case was nearly one month old. But we would like to add that we did not receive anything in writing until the 1st of July, 2011 – two weeks after the incident took place. Furthermore, when the complainant rang us on the 17th of June, 2011 (the day after the incident), she was informed that direct complaints about one of our stewards would have to be directed to Metro customer services, whereas a report of our steward to the police (involving video surveillance) would have to be directed at the police, since we do not have access to the recorded video.

If a passenger wishes to make an official complaint about one of our members of staff or about a fare evasion ticket, this has to be in our hands within 14 days of the issuing of the fare evasion ticket, which it clearly says in the issued ticket in both Danish and English. If a passenger wishes to report one of our members of staff to the police, this has to be done directly to the police and we are then able to support and assist the police investigation by providing recorded video. The video recordings are solely meant for the police in their investigations.

On June 17th, 2011, the complainant contacted us by phone and was informed that if she wanted us to look into the case, she would have to send us a complaint in writing (either by e-mail or regular mail) no later than 14 days after the incident. Not until July 1st, did we receive anything

from the complainant but the complaint immediately resulted in an investigation into the case and on July 12th, 2001, we sent back a reply to the complainant. With reference to our casework procedures all inquiries or complaints have to be in writing, which we informed the complainant of over the phone when she called us on June 17th. If the complainant had contacted us directly in writing within the 14 days, we would obviously have investigated the incident in exactly the same way as we have done since receiving the inquiry from the Foreign Ministry.

Vedrørende klagepunkt 6): Our stewards go through several courses in both conflict resolution as well as professional conduct towards our customers. If a ticketing situation comes to a head and our staff is verbally challenged, we cannot deny that the steward may have responded to the customer in a way which may be conceived as insulting. However, in a heated situation as the one in question, a contributing factor to a possible misunderstanding could be the fact that one party is speaking a foreign language (English). The incident was subsequently reported to our safety department.

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, stk. 1, 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).

Ifølge § 23, stk. 3, kan jernbanevirksomheden fastsætte regler om pligt for passagerer, der ikke er i besiddelse af gyldig rejsehjemmel (billetter og kort), til på forlangende at forevise legitimation med henblik på at fastslå passagerens identitet.

I henhold til § 4, stk. 3, i bekendtgørelse om kontrolafgifter af 22. september 2006 udstedt i medfør af bekendtgørelse af lov om jernbaner § 23 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 på 750 kr. for voksne.

Eventuelle indsigelser vedrørende afgifter skal skriftligt være Metroens kundeservice i hænde senest 14 dage efter afgiftens udstedelse.

Kunder uden gyldig billet har pligt til at opgive fuldt navn, fødselsdato og adresse samt legitimere sig på fyldestgørende måde.

Den konkrete sag:

Vedrørende klagepunkt 1):

Metroservice har indsendt et billede, som blev taget i forbindelse med kontrolafgiftens udstedelse, hvoraf fremgår, at det foreviste klippekort er et 2-zoners kort stemplet én gang kl. 13:15 i zone 01. En sådan stempling er gyldig i en time i 2 zoner. Klagerens rejsehjemmel blev kontrolleret omkring kl. 17:20 i zone 4, hvorfor klippekortet ikke udgjorde gyldig rejsehjemmel, både fordi der ikke var stemplet et tilstrækkeligt antal zoner, og fordi den tidsmæssige gyldighed var udløbet.

Kontrolafgiften er derfor pålagt med rette.

Klageren nævnte allerede i sit brev af 22. juni 2011, at stewarden havde beholdt hendes klippekort. Brevet blev videresendt til Metroservice den 1. juli 2011. Metroservice har imidlertid først under nærværende sags behandling oplyst, at man ikke på nuværende tidspunkt er i stand til at undersøge nærmere, om stewarden skulle have beholdt klagerens klippekort, men at dette ville være modstridende med instruksen.

På baggrund af at Metroservice som følge af den forløbne tid ikke længere kan redegøre for, om stewarden skulle have beholdt klagerens klippekort, finder ankenævnet, at Metroservice skal pålægges at refundere de ubrugte klip på klagerens klippekort, som fremgår af det foto, som blev taget ved kontrollen.

Vedrørende klagepunkt 2):

Således som sagen foreligger oplyst, er det uklart, hvorledes kontrolsituationen forløb, herunder om politiet blev tilkaldt, da klageren ikke ville eller kunne forevise sit pas, eller om dette først skete på et senere tidspunkt.

Henset til denne bevisvivi kan ankenævnet kun udtale sig generelt om reglerne.

Det følger af bekendtgørelse af lov om jernbaner § 23, stk. 3, som også er gældende for Metroen, at selskabet kan fastsætte regler om pligt for passagerer, der ikke er i besiddelse af gyldig rejsehjemmel (billetter og kort), til på forlangende at forevise legitimation med henblik på at fastslå passagerens identitet, og at Metroen som følge heraf har en regel i sine forretningsbetingelser om, at kunder uden gyldig billet har pligt til at opgive fuldt navn, fødselsdato og adresse samt legitimere sig på fyldestgørende måde.

Herefter er det ankenævnets opfattelse, at en steward i forbindelse med udstedelse af en kontrolafgift for manglende gyldig rejsehjemmel er berettiget til at kræve, at passageren oplyser sin fødselsdato *samt* legitimerer sig på fyldestgørende måde.

Vedrørende anvendelse af politiet til legitimation af rejsende, har ankenævnet i en tidligere afgørelse udtalt, at det er det ankenævnets opfattelse, at det kan være vanskeligt eller umuligt for en kontrollør at bedømme, om den pågældende afgiver rigtige oplysninger, hvis der ikke forevises legitimation, og det kan derfor være hensigtsmæssigt at tilkalde politiet. Ankenævnet finder ikke, at et sådant skridt er uproportionalt over for passagerer, som ikke har gyldig rejsehjemmel og som ikke kan eller vil legitimere sig.

Vedrørende klagepunkt 3):

Som det fremgår ovenfor er selskabet berettiget til at kræve, at passageren oplyser fødselsdato. Der er imidlertid ikke pligt til at en (dansk) passager derudover oplyser de sidste 4 cifre i det danske cpr-nummer, hvilket ankenævnet også har fastslået i en tidligere afgørelse (2010-0142).

På den baggrund er der ikke grundlag for at udtale kritik af, at stewarden oversatte blankettens felt "cpr-nr." med "date of birth" over for klageren.

Vedrørende klagepunkt 4):

Parterne har afgivet divergerende oplysninger om det passerede i forbindelse med kontrollen – herunder om baggrunden for og måden hvorpå klageren faldt til jorden.

På baggrund af denne bevistvivl kan ankenævnet ikke få yderligere ind i spørgsmålet.

Vedrørende klagepunkt 5):

Det fremgår af sagen, at klagerens henvendelse til Metroservice den 17. juni 2011 skete telefonisk, og der foreligger derfor ikke skriftlig dokumentation for, hvorledes hun blev rådgivet af den pågældende medarbejder.

Metroservice gør gældende, at klageren blev rådgivet om at rette henvendelse til politiet vedrørende videooptagelserne og til at rette skriftlig henvendelse til Metroservice vedrørende klagen over stewarderne. Klageren gør gældende, at hun blev vejledt om at skrive en e-mail med emnefeltet "urgent" til Metroservice, som herefter ville rette henvendelse til politiet for udlevering af videooptagelserne.

Klageren har ikke fremlagt de e-mails, hun oplyser at have sendt til Metroservice, og Metroservice gør gældende, at den første skriftlige henvendelse, de modtog i sagen, var den 1. juli 2011 via Udenrigsministeriet.

På baggrund af denne bevistvivl, finder ankenævnet ikke grundlag for at udtale kritik af Metroservice i anledning af dette klagepunkt, men ankenævnet bemærker, at Metroservice skal sikre, at medarbejderne, som arbejder med kundehenvendelser, rådgiver kunderne korrekt om, hvorledes de skal forholde sig i de tilfælde, hvor kunderne anmoder om at få udleveret videooptagelser.

Vedrørende klagepunkt 6):

Klageren gør gældende, at den kvindelige steward udtalte følgende til klageren: "Fucking look at me. You can't call me a fucking racist."

Klageren har i sin første beskrivelse af forløbet i brevet af 22. juni 2011 til sin arbejdsgiver anført, at eftersom klageren var rystet og vred, sagde hun til den kvindelige steward, at det hele skyldtes, at klageren var udlænding, og at den opførsel, hun var blevet udsat for, måtte være racemæssigt motiveret.

På den baggrund kan ankenævnet ikke udelukke, at situationen er eskaleret på baggrund af klagerens egen opførsel, men under alle omstændigheder burde stewarden ikke have udtalt sig som anført af klageren, og ankenævnet finder, at en sådan uprofessionel adfærd er kritisabel.

Ankenævnet træffer herefter følgende

AFGØRELSE:

Metroservice er berettiget til at opretholde kravet om klagerens betaling af kontrolafgiften på 750 kr. Beløbet skal betales inden 30 dage jf. ankenævnets vedtægters § 15.

Metroservice pålægges at refundere de ubrugte klip på klagerens klippekort, som fremgår af det foto, som blev taget ved kontrollen.

Da klageren har fået delvist medhold i klagen vedrørende den del, som vedrører klippekortet, tilbagebetales klagegebyret, jf. § 26, stk. 4.

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 16. december 2011.



Tine Vuust
Nævnensformand