

## AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2016-0289
- Klageren:** XX  
Tyskland
- Indklagede:** Metroselskabet I/S v/Metro Service A/S  
**CVRnummer:** 21 26 38 34
- Klagen vedrører:** Kontrolafgift på 750 kr., grundet manglede rejsehjemmel. Medtog kun den ene af to billetter fra automaten.
- Parternes krav:** Klageren ønsker kontrolafgiften annulleret  
Indklagede fastholder denne
- Ankenævnets sammensætning:** Nævnshoved, landsdommer Tine Vuust  
Asta Ostrowski  
Torben Steenberg  
Bjarne Lindberg Bak  
Alice Stærdahl Andersen

Ankenævnet for Bus, Tog og Metro har på sit møde den 2. maj 2017 truffet følgende

### **FLERTALSAFGØRELSE:**

Metroselskabet I/S v/Metro Service A/S er berettiget til at opretholde kravet om klagerens betaling af kontrolafgiften på 750 kr.

Klageren skal betale beløbet til Metroselskabet I/S v/Metro Service A/S, som sender et girokort 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.

## SAGENS OMSTÆNDIGHEDER:

Klageren og en rejsefælle, som er tyskere, var på ferie i København. Ifølge klageren havde de under hele opholdet udelukkende rejst med bus, hvor de havde fået udleveret én billet, når de købte billet til 2 personer.

Den 5. november 2016 rejste de med metroen for første gang og købte i en billetautomat billet til 2 personer. Klageren medtog imidlertid kun én billet, da hun gik ud fra at denne gjaldt for to personer, ligesom i busserne.

Det fremgår af Metro Services oplysninger til sagen, at billet nr. 2 blev udstedt 13 sekunder efter billet nr. 1.



Efter at metroen havde forladt Lergravsparken st., var der kontrol af deres rejsehjemmel, hvor kun klagerens medrejsende kunne fremvise gyldig billet. Klageren blev derfor klokken 15:10 pålagt en kontrolafgift på 750 kr. for manglende rejsehjemmel.

Klageren anmodede den 7. november Metro service om annullering af kontrolafgiften og anførte til støtte herfor følgende:

"We are from Germany, living 2 weeks here in Kopenhagen, not beeing used to the public traffic system.  
In the first week we only had to take the bus No. 5A from Slotsgade to Norreport or main station. In the bus I always bought tickets for 2 persons and I had to pay 48 DKK and we got only one ticket for the two of us.

On Saturday we made a trip to Amager Strand and when we got back we took the Metro, asked one Danish guy at the vending machine, how much zones we had to buy. We did and pressed the button for 2 persons. The ticket came and we were just entering into the Metro, not waiting for the second ticket, because we were used to get only one ticket in the bus.

Then we were controlled. But instead of letting us explain what happened, your employee behaved in an unacceptable way. His conclusion was clear from the beginning: here are 2 persons who want to spare money and not paying for public transportation. With his kind of uniform which he wears from the company he felt like he is the one who has the power, I even would go so far to say, that he displayed a racist behaviour.

He did not explain anything, he just gave commands. He made a photograph of my ID without asking me about this. And when I wanted to see his ID and asked him to explain what I have to do with the card he gave me, he just went away from us and out of the train. It was unbelievable and I was so shocked about this kind of behaviour. Upto now we did not experience such infamies in Denmark. But I know that this was not a native Dane.

I could have understand that he could have said: You are not in a position to prove that you bought a second ticket, so you have to buy a ticket now or pay 24 DKK to me.

But to give us a ticket for 750 DKK as a fine - no way. That is simply outrageous and above each limits. There is only one advice to the Danish Metro: Make sure you educate your employes. This one had neither one sign of intelligence nore social behaviour and knowledge of human nature.

I would like to hear your comments about this.”

Metro Service fastholdt den 11. november 2016 kontrolafgiften med henvisning til selvbetjenings-systemet, samt at billetterne bliver printet hver for sig, da det giver to rejsende mulighed for, at rejse uafhængigt af hinanden. Metro Service har talt med den pågældende steward vedrørende kritikken af stewards adfærd. Stewarden kan ikke genkende den af klageren beskrevne situation.

Sekretariatet har indhentet logs fra Metro Service fra automaten og det fremgår heraf, at billet 1 blev udskrevet klokken 15:00:02 og billet 2 blev udskrevet klokken 15:00:15.

## **ANKENÆVNETS BEGRUNDELSE:**

### **3 medlemmer (Tine Vuust, Bjarne Lindberg Bak og Alice Stærdahl) udtaler:**

Klageren og den medrejsende kunne ved kontrollen i metroen den 5. november 2016 ikke forevise gyldig rejsehjemmel, idet de kun havde billet til én rejsende. Kontrolafgiften blev hermed pålagt med rette.

Vi finder, at der ikke har foreligget sådanne særlige omstændigheder, at kontrolafgiften skal frafaldes.

Uanset om der på bussen kun blev udstedt én billet til 2 rejsende, så finder vi, at billetten fra metroens billetautomat efter sit indhold sammenholdt med, at der kun blev udstedt én billet, med tilstrækkelig tydelighed angiver, at den kun var gyldig for én person. Vi har endvidere lagt vægt på, at der fandtes tilstrækkelig og tydelig information på Frederiksberg st. vedrørende billetter og zoner, hvorfor klageren skulle have orienteret sig bedre inden påstigning på metroen.

Pligten til at betale kontrolafgift er ikke betinget af, om passageren bevidst har forsøgt at unddrage sig betaling for rejsen, og da dette er et område med mulighed for omgåelse af reglerne om at kunne forevise gyldig rejsehjemmel, er det vores opfattelse, at ikke har foreligget sådanne særlig omstændigheder, at klageren skal fritages for kontrolafgiften.

Vi bemærker dog, at det ville være hensigtsmæssigt, hvis Metro Service ændrer billetterne ved at sætte et 1-tal foran "voksen", så det gøres tydeligere for passagerne, at billetten kun er gældende for én passager.

## **2 medlemmer (Asta Ostrowski og Torben Steenberg) udtaler:**

Vi finder, at det må komme klageren til gode, at billettekst ikke er tilstrækkelig tydelig. Det var ikke tydeligt for klageren, at billetten kun gjaldt for én person, da der ikke stod et 1-tal foran "voksen" eller fremgik anden information, som indikerede, at billetten kun gjaldt for én person.

Det er ikke rimeligt, når Metro Service gør gældende, at man ud fra prisen skal kunne tjekke, om billetten kun skulle være gældende for én person, idet det ikke er sikkert, at man i købsituationen var opmærksom på, hvilket beløb man godkendte.

Herefter finder vi, at Metro Service skal frafalde kontrolafgiften og betale 10.000 kr. for tabt sag i ankenævnet.

Der afsiges kendelse efter stemmeflertallet

## **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.

Ifølge de dagældende fælles rejseregler for trafikvirksomhederne i Hovedstadsområdet, hvori hjemmelen til udstedelse af kontrolafgift fremgår. Det anføres således bl.a., at passageren skal have gyldig rejsehjemmel til hele rejsen, og at denne skal kunne vises frem for kontrolpersonalet under hele rejsen, ved udstigning, i metroen indtil metroens område forlades, og i S-tog og lokalbanetog indtil perronen forlades.

Passagerer, der ikke på forlangende viser gyldig billet eller kort, herunder korrekt ind-checket rejsekort, skal betale en kontrolafgift på 750 kr.

## **PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:**

### **Klageren anfører følgende:**

" I assume that you can have an insight in the previous mails which the Metro Company and I exchanged concerning a fine which was given to me.

I refer to the answer of the customer service of MetroService Copenhagen. I will not accept that answer.

It says that the involved steward who gave me the fine in the metro cannot confirm the events described by me. Well: Now it is one word against the other.

What I can accept, is, that we were only able to show one ticket instead of two, because the second one, which we purchased, was still in the vending machine.

So I accept to pay again for one ticket, which is 24 DKK. I will not accept the fine itself because the staff has also to fulfill their duties, for example treat the guests like human beings and explain what to do.

If necessary I can scan my account statement on which you clearly see, that we purchased 2 tickets. "

### **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) 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 and her companion was met by a steward inspecting tickets on the 5<sup>th</sup> of November 2016 at 15:09 between Lergravsparken station and Kongens Nytorv station. The company of two presented only one ticket for the two of them, and a fare evasion ticket was issued to the complainant, according to the travel regulations.

We are sorry if the complainant believes that the steward has behaved inappropriately when he checked tickets.

When our stewards check tickets, they only relate to whether valid tickets can be presented, and if this is not the case, the steward is obliged to issue a fine whatever might be the reason for the

lack of tickets. In other words, the stewards, are not permitted to conduct any kind of case management, but may only inform the passenger to write to Customer Service.

In her letter to us the complainant writes, that the steward showed racist and accusatory behavior, and that he would not listen to her explanation.

We have sent the complainant's statements on to the steward, who absolutely do not recognize the complainant's outlay of the ticketing situation. According to the steward, it was an ordinary ticketing situation where he informed about the reason for fine issued and informed the complainant of how she should act if she wanted to oppose the fine. The steward rejects to the allegedly racist behavior. We have attached all the Stewards answer as a pdf file.

The complainant informs, that she bought two tickets from the machine at Amager Strand station, but that she assumed that the one print she took from the machine was a ticket for two people. Based on the complainant's information, we contacted our technical department who examined the ticket vending machine at Amager Strand station. We have attached a pdf file that shows that there has been no error on the machine, nor did it run out of paper or the like. This is also supported by the fact that there is no error reported in the technical log of the control room, and that several other ticket sales has been completed on the machine in the period investigated.

At Metro all tickets are printed individually. This so passengers are not forced to stay together on the entire journey, as tickets bought from Metro also are valid for trains and buses.

If you have bought more than one ticket there are 12 seconds between deliveries. When the machine is busy printing, a message appears on the screen display and the light flashes in the 'drawer' where the ticket is delivered.

The complainant says that she paid 48,- DKK in the ticket machine. If the complainant had checked the print that came out of the machine, the complainant would immediately have known that the ticket she held in her hand had a value of 24,- DKK and thus was a ticket for a single person. See below an example of a ticket for 24,- DKK. The ticket also informs what zone it is valid from and for how many zones and minutes.

When inspected by a steward, you must be able to present a valid ticket. If not, you must accept receiving a fine. Tickets are impersonal, and only valid for the holder at the time of inspection, subsequent presentation is not accepted and for the same reason nor a bank statement can be accepted.

Considering the above, we maintain our claim on the fare evasion ticket of 750,- kroner . "

#### **Klageren har afslutningsvist anført at:**

" There are no further complaints, there are still the arguments which I wrote in my mail (s. attachments). The steward did not behave at all like a serious steward. He liked his role as somebody to write out fines but not at all to explain in a normal way what to do and ask question. He just gave commands. It was a very ugly situation.

As I said, I will pay for the ticket which we could not show in that moment, because it was still in the vending machine. But I do not at all accept the fine, since I proved in my last email, that we bought 2 tickets "

På ankenævnets vegne



Tine Vuust  
Nævnshoved