

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2019-0124
- Klageren:** XX
London, England
- Indklagede:** Metroselskabet I/S v/Metro Service A/S
CVR-nummer: 21 26 38 34
- Klagen vedrører:** Kontrolafgift på 750 kr. grundet manglende billet.
- Parternes krav:** Klageren ønsker, at ankenævnet annullerer kontrolafgiften og gør gældende, at billetautomaten var ude af drift, hvorfor hun regnede med, at billetten kunne købes efter endt rejse.
- Indklagede fastholder kontrolafgiften
- Ankenævnets sammensætning:** Nævnensformand, landsdommer Tine Vuust
Rasmus Markussen
Torben Steenberg
Asra Stinus
Helle Berg Johansen

Ankenævnet for Bus, Tog og Metro har på sit møde den 11. september 2019 truffet følgende

AFGØRELSE:

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

Beløbet skal betales til Metroselskabet I/S v/Metro Service A/S, som sender betalingsoplysninger til klageren.

Da klageren ikke har fået medhold i klagen, tilbagebetales klagegebyret ikke, jf. ankenævnets vedtægter § 24, stk. 2, modsætningsvist.

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Hver af parterne kan anlægge sag ved domstolene om de forhold, som klagen har vedrørt.

Klageren henvises til at søge yderligere oplysning om eventuel bistand i forbindelse med sagsanlæg fx på www.domstol.dk, www.advokatnoeglen.dk og /eller eget forsikringselskab om eventuel forsikringsretshjælp.

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SAGENS OMSTÆNDIGHEDER:

Klageren, som er bosiddende i England, rejste den 5. maj 2019 med S-toget fra Nordhavn st. til Nørreport st., hvorfra hun skiftede til metroen i retning mod Lufthavnen st. Ifølge klageren var billetautomaten på Nordhavn st. ude af drift, hvorfor hun måtte stige på S-toget uden billet, fordi hun havde travlt med at nå sit fly fra lufthavnen.

Da hun skiftede til metro, købte hun ikke nogen billet på Nørreport st., og hun steg således om bord på metroen uden rejsehjemmel.

Efter metroen havde forladt Amagerbro st. i zone 01, var der kontrol af klagerens rejsehjemmel, og klageren blev kl. 10:23 pålagt en kontrolafgift på 750 kr. for manglende rejsehjemmel.

Samme dag anmodede klageren Metro Service om annullering af kontrolafgiften og gjorde til støtte herfor følgende gældende:

"When I arrived at the Nordhavn station there was only one vending machine for the platform, which was not out of order"

"As I was in a hurry to go to the airport (my flight was 11:50 am so I was running late) I asked some people on the platform and they said there was not much I could do and asked me to show the photo as a proof if needed."

Den 7. maj 2019 fastholdt Metro Service kontrolafgiften med henvisning til selvbetjeningssystemet, hvorefter det er passagerens eget ansvar selv at sørge for gyldig billet til hele rejsen inden påstigning. Derudover henviste Metro Service til, at det er passagerens eget ansvar at købe billet til metroen, selvom billetautomaten var ude af drift på Nordhavn st.



Mærkat, som sidder på dørene på perronen til metroen.

ANKENÆVNETS BEGRUNDELSE:

Klageren kunne ikke forevise gyldig rejsehjemmel i kontrolsituationen, fordi hun var steget om bord på metroen uden at have købt billet. Det har aldrig været muligt at købe billet om bord på metroen eller ved endt rejse, og det fremgår på engelsk på dørene til metroen, at det koster en kontrolafgift at stige om bord uden rejsehjemmel.

Kontrolafgiften blev herefter pålagt med rette.

Det af klageren anførte om, at det var hendes første rejse til Danmark, at billetautomaten var ude af drift på Nordhavn st., og at dette indebærer, at man slipper for en kontrolafgift i London, samt at hun troede, at hun kunne købe en billet ved endt rejse, kan ikke føre til andet resultat.

Det er ankenævnets opfattelse, at klageren ikke uden nærmere undersøgelse af betingelserne for rejse med metro, kunne gå ud fra, at hun kunne stige gratis om bord og først købe billet efterfølgende, som i London. Ankenævnet har tidligere udtalt, at der på metrostationer er tilstrækkelig tydelig information om billetter på engelsk. Metro Service skal ikke i en situation som den foreliggende bære ansvaret for, at der på Nordhavn S-tog station muligvis ikke var information på engelsk.

Det bemærkes, at pligten til at betale kontrolafgift ikke er betinget af, om passageren bevidst har forsøgt at unddrage sig fuld betaling, da dette er et område med oplagt mulighed for omgåelse af reglerne om at betale for sin rejse.

Klageren har derudover gjort gældende over for ankenævnet, at det var en diskriminerende og racistisk adfærd at udstede en kontrolafgift til hende. Ankenævnet har ikke grundlag for at konstatere, at dette var tilfældet, idet dette falder uden for ankenævnets arbejdsområde.

På den baggrund finder ankenævnet, at der ikke foreligger sådanne særlige omstændigheder, at klageren skal fritages for kontrolafgiften.

RETSGRUNDLAG:

Ifølge § 2, stk. 1, jf. § 3 nr. 3 i lovbekendtgørelse nr. 686 af 27. maj 2015 om lov om jernbaner, gælder loven også for metroen. Af § 14 stk. 1 i lov om ændring af lov om trafikskaber og jernbaneloven, fremgår 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.

I de fælles landsdækkende rejseregler, som trafikvirksomhederne har vedtaget, præciseres hjemmelen til at udstede en kontrolafgift.

Det anføres således bl.a., at passagerer, der ikke på forlangende viser gyldig rejsehjemmel, herunder er korrekt checket ind på rejsekort til deres rejse, skal betale en kontrolafgift på 750 kr. for voksne. Det gælder også, hvis passageren har købt rejsehjemmel via en mobil enhed, der ikke kan kontrolleres, f.eks. hvis denne er løbet tør for strøm eller gået i stykker. Det er passagerens ansvar, at rejsehjemlen er endeligt modtaget på den mobile enhed før påstigning. Som passager uden gyldig rejsehjemmel betragtes også passager, der benytter kort med begrænset tidsgyldighed (f.eks. pensionistkort) uden for kortets gyldighedstid, eller hvis andre rejsetidsbegrænsninger ikke overholdes (f.eks. for hvornår cykler må medtages). Passagerer, der rejser alene på andres rejsekort personligt eller med en anden kundetype, end passageren er berettiget til, rejser uden gyldig rejsehjemmel. Kortindehaveren skal altid selv være checket ind på kortet på de rejser, hvor et rejsekort personligt benyttes. Rejsekortet må endvidere ikke være så slidt/tildækket, at navnet ikke kan læses.

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører følgende:

"I was on my way to the airport at around 9:50 am on the 5th of May. When I arrived at the Nordhaven station there was only one vending machine for the platform, which was not out of order (I have a photo as a proof). As I was in a hurry to go to the airport (my flight was 11:50 am so I was running late) I asked some people on the platform and they said there was not much I could do and asked me to show the photo as a proof if needed. I have travelled quite extensively all over the world I thus thought I could pay the fees at my arrival at the airport in this situation. I also need to emphasise that I never had any intention of taking the metro without the payment. I had the valid travel tickets for the whole week during my stay in Copenhagen and this happened typically on my last day. The metro company has written to me that you I could contact them using the call points at the stations and on the ticket vending machine. But there was no English information on the vending machine and I believe no tourist could understand those points easily when the local people also advised to take the photo and keep it as a proof. I am really disappointed by the deci-

sion of the metro company. I really enjoyed my stay and I do not want to have this issue ruin my good travelling memories. In London we also have a very tight regulation regarding the tickets but the out-of-order vending machine could be regarded as a sound proof for failing to present the tickets without trying to break the regulation. I would really appreciate it if you could make an appeal of my case to you. This is not just a matter of paying the fine but I feel my good intention was completely disregarded and let down, which made me feel very upset and disappointed about the whole experience. I would learn a lesson from this occasion but I had never travelled to Denmark before and it was very difficult to get the right information without any knowledge of Danish language so please take this fact into consideration and I will never make the same mistakes when I travel next time."

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, <https://dinoffentligetransport.dk/service/for-tourists/>, <https://www.rejsekort.dk/~media/rejsekort/pdf/flr/jointnationaltravelregulations.pdf> as well as on our information boards which are placed at every station. The information boards contain travel information in both English and Danish.

Furthermore there are stickers at all platform screen doors in the metro where the customers are advised not to boarder without a valid ticket and the consequence if doing so:



Our inspectors makes spot check of the passengers and issues fare evasion tickets to all customers without a valid ticket. They do not distinguish between an intentional or unintentional mistake, or what might be the reason for lack of a valid ticket. They only check the validity of the ticket the customer presents.

In this case where the complainant could not get a ticket at Nordhavn station it would have been possible to buy a ticket when changing from S-train to metro at Nørreport station, either buying the ticket at the DSB station when getting off the S-train or at the metro station before getting on the metro. In case the complainant had any question regarding what to buy or where to buy a

ticket, Nørreport metro station is a manned station and she could have asked one of your employees. Furthermore it is possible to use the yellow call point that are to be found several places at all metro stations.

We must point out that we do not take into consideration whether the lack of a valid ticket is due to a conscious or unconscious act. Since we want to treat all passengers equally, we only consider the fact that it is the customer's responsibility - before boarding the train - to secure a ticket, which can be presented on demand.

The complainant's comments that they were in a hurry to go to the airport as they were afraid of running late, do not change this fact.

When going to the airport one must always be in good time just in case a delay might occur on the way.

Based on the above and earlier correspondence we still find the fare evasion ticket correctly issued as the complainant could not show a valid ticket when asked for by the steward.

We therefore maintain our claim of DKK 750,-."

Hertil har klageren bemærket:

"I actually find this whole experience very unpleasant as they only inspected us in the whole carriage and as soon as they issued a fine they left the train without inspecting any more tickets. I think their act was very racist and selective towards international tourists. They were so unfair and discriminating."

Hertil har indklagede bemærket:

"As mentioned in our first reply the inspectors make spot check of the passengers. As the inspectors are divided into sections they might easily make an inspection of a customer and in case he or she cannot present a valid ticket, a fare evasion ticket is issued. If the inspector then has entered a new section, he or she must leave the train and return to his or her own area.

Therefore we do not find the ticketing and our employees as racial, selective or discriminating towards the complainant or any other international tourists for that matter if only ticketing one passenger, issuing a fare evasion ticket and then leave the train.

As also mentioned in the first reply all information regarding how to buy a ticket and the consequence if not doing so, is available at all metro stations.

There are also information on how to get help if necessary – call points at the ticket vending machines and yellow call point at stations and in trains.

The complainant states: "*In many countries people have a choice to pay at the end of the journey when the machine is broken with relevant proof.*"

The complainant could have chosen to buy a ticket when changing from S-train to metro (a ticket could have been bought either at the S-train station or at the metro station), but did not do so despite the fact that all platform screen doors in the metro have stickers telling the passengers to

remember a valid ticket and the consequence if not having a valid ticket to present when asked for by inspectors.

At Nørreport station the complainant could also have chosen to contact an employee as Nørreport metro station is a manned station.”

Hertil har klageren yderligere bemærket:

“I would like to add one comment regarding their reply. I did look for the staff at the first station where the ticket machine did not work. There were no one on the platform and the downstairs area. Also the ticket inspectors never got on board in another carriage again as we moved to another carriage out of embarrassment. If there were some help available at the station I boarded this would not have happened. Also I had to run to catch the train at the transit station as I was getting late for the airport. All their justification were made without really considering any of my concerns and points raised.”

På ankenævnets vegne



Tine Vuust
Nævnensformand