

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2019-0263
- Klageren:** XX på egne vegne og på vegne af YY
Tyskland
- Indklagede:** Metroselskabet I/S v/Metro Service A/S
CVR-nummer: 21 26 38 34
- Klagen vedrører:** To kontrolafgifter à 750 kr. grundet rejse på udløbne billetter
- Parternes krav:** Klageren ønsker, at ankenævnet annullerer kontrolafgifterne og gør gældende, at de har betalt 96 kr. for 4 enkeltbilletter og dermed har betalt for rejsen
- 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 19. februar 2020 truffet følgende

AFGØRELSE:

Metroselskabet I/S v/Metro Service A/S er berettiget til at opretholde kravet om betaling af to kontrolafgifter à 750 kr., i alt 1.500 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.

-oOo-

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 forsikringssselskab om eventuel forsikringsretshjælp.

SAGENS OMSTÆNDIGHEDER:

Klageren og en veninde, som begge er bosat i Tyskland og var turister i København, skulle om aftenen den 14. august 2019 rejse med Metroen til Kongens Nytorv st. Før de steg på Metroen på Bella Center st. købte de fire 2-zoners billetter for at have billetter til både ud- og hjemrejse. Ifølge klageren modtog de imidlertid kun tre billetter, hvilket de dog først blev opmærksomme på, da de var ombord på Metroen.

På tilbagerejsen var der efter Sundby st. kl. 23:45 kontrol af deres rejsehjemmel, og klageren forviste på begge vegne de tre 2-zoners billetter. Da billetterne var udløbet kl. 22, blev klageren og veninden hver pålagt en kontrolafgift på 750 kr.

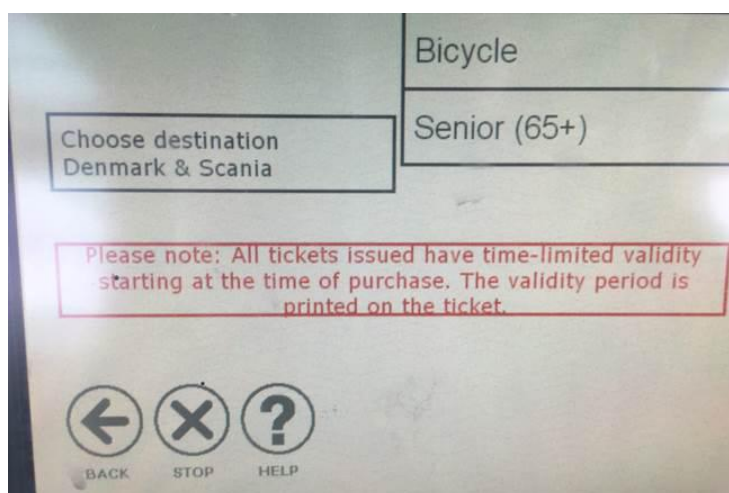
Stewarden har noteret følgende på klagerens elektroniske kontrolafgift:

<Note>14-08-2019 23:53 - Stw: Pax havde 3 stk 2 Zones billetter som udløb kl 22. Pax forklarede han havde købt 4 billetter men " at der kun kom 3 ud af automaten og han ikke vidste at den var tids bestemt.</Note>

Efter hjemkomst til hotellet anmodede klageren med det samme Metro Service om at annullere begge kontrolafgifter med den begrundelse, at de er vant til et system, hvor man kan købe sine billetter forud og validere dem, når man skal rejse. Han oplyste, at de var ikke bekendte med, at billetterne var tidsbegrænsede, men uanset, at billetterne var udløbet, havde de betalt 96 kr. for fire billetter, og dermed havde de betalt for deres rejse.

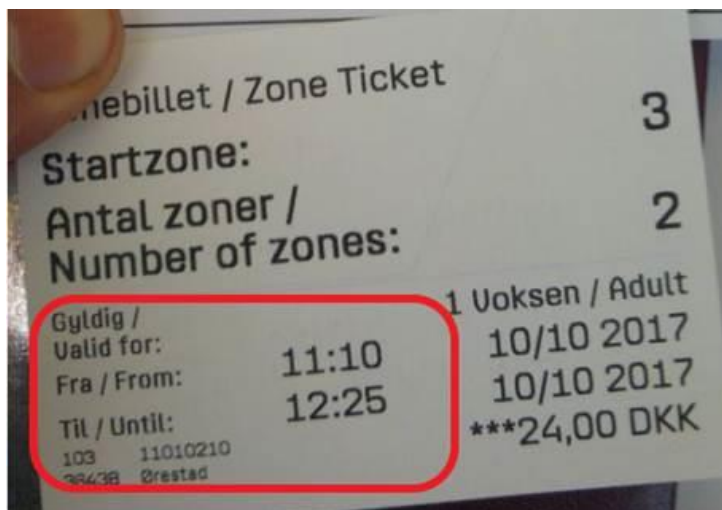
Metro Service fastholdt den 19. august 2019 kontrolafgifterne med henvisning til selvbetjeningsprincippet og til, at de kunne have søgt hjælp hos Metroens personale, hvis de ikke forstod billetten eller billetsystemet. Endvidere fremgik tidsgyldigheden af billetterne, som de også var blevet oplyst om i billetautomatens købsflow.

Fra billetautomatens købsflow (når der er valgt engelsk som sprog):



Der er ikke fremlagt kopi af klagerens billetter i sagen, og det er uoplyst, hvorvidt klageren valgte engelsk som sprog ved billetbestillingen.

Metro Service har fremlagt følgende eksempel på en zonebillet med tidsbegrænsning, hvor tidsgyldigheden fremgår på både dansk og engelsk:

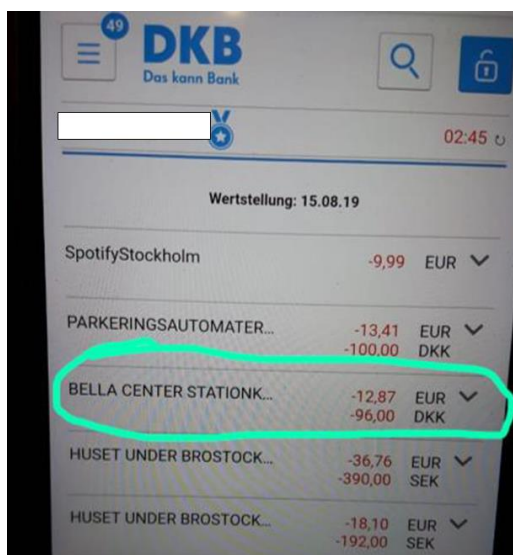


Den 9. september 2019 indsendte klageren klageskema til ankenævnet og overførte samme dag klagegebyret, som blev modtaget på ankenævnets konto den 10. september 2019.

Da indbetalingen ved en fejl i ankenævnets sekretariat blev overset, rykkede Metro Service den 14. oktober 2019 klageren for betaling af kontrolafgiften og pålagde et rykkergebyr på 100 kr.

Sagen blev oprettet i ankenævnet den 22. november 2019, og Metro Service har under sagens forberedelse meddelt sekretariatet, at de som følge af fejlen har frafaldet rykkergebyret på 100 kr.

Klageren har under ankenævnsagen indsendt nedenstående kontoudtog som bevis for, at de betalte 96 kr. for fire billetter på Bella Center st.



ANKENÆVNETS BEGRUNDELSE:

Ankenævnet lægger til grund, at klageren foreviste tre 2-zoners billetter, som udløb kl. 22:00. Da billetterne ifølge klageren blev købt på Bella Center st., lægges det endvidere til grund, at der var

tale om Metrobilletter, og at de derfor udseendemæssigt svarede til eksemplet ovenfor, dog således at "Til/Until:" var angivet til "22:00", og "Fra/From:" var angivet til "20:45", idet gyldighedsperioden for 2-zoners billetter er 1 time og 15 minutter.

Da kontrollen fandt sted kl. 23:45 var billetterne udløbet allerede på tidspunktet, hvor parret steg ombord på Metroen på Kongens Nytorv st., og var derfor ugyldige. Kontrolafgifterne blev dermed pålagt med rette.

Det er ankenævnets opfattelse, at klageren og dennes veninde ikke uden at have undersøgt dette nærmere med rette kunne gå ud fra, at billetter kunne købes forud for rejsen og valideres på rejsetidspunktet, og at reglerne om billetters gyldighed i den kollektive trafik i Danmark svarede til reglerne i deres hjemland.

Da billetter ikke kan/skal valideres i den kollektive trafik i Danmark, kunne parret således heller ikke foretage en sådan validering af billetterne, og de burde derfor have undersøgt nærmere for så vidt angik billetternes gyldighed, før de steg ombord på Metroen for at returnere til Bella Center st.

Det kan ikke føre til et andet resultat, at klageren under ankenævns sagen har indsendt et kontoudtog, som viser, at der er foretaget et køb på 96 kr. på Bella Center st., da billetterne, uanset at der var betalt for dem, var udløbet.

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 trafikkselskaber 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.

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører følgende:

" on August 14th, Ms. YY and me bought 4 Single Metro-Tickets at the Bella Center Station in Copenhagen in order to get to the city center and back to the hotel later that night. We are used to a different system at home (Germany), where the actual validity doesn't start just in the moment of purchase but by validating it using a validation device, located at the platform/bus-stop/etc. or inside the train/tram/bus. So you can buy as many tickets as you want in order to validate and use them whenever you need to, which is what we thought we would be doing in Copenhagen as well when we bought 4 single tickets at once. We were in a

hurry when we were buying the tickets because the train was already about to arrive at the station so during this short moment we didn't think about the ticketing-system in Copenhagen possibly being different to what we know back home. Also we didn't take a look at the tickets issued because, as already mentioned, we were in need to hurry in or der to catch the train, otherwise we would've recognized that the tickets are only valid for 75 minutes which was shown to us later by the Metro-inspector, who saw himself forced to issue a fare evasion ticket to both of us, which we can totally understand as there are rules and of course he needs to do his job right by following them strictly. He also kindly informed us about the possibility to complain about the fare evasion tickets online at www.m.dk, which we did right away after arriving at our hotel. A few days later the customer service replied, telling us that we still have to pay the fee which is why we are now addressing to you.

Of course we do see our mistake made by not checking the information provided at the station carefully enough and we are very sorry for obviously not using the ticketing system the right way, but still we sincerely payed for the four rides we took (2x Bella Center - Kongens Nytorv & 2x Kongens Nytorv - Bella Center) and did not try to fool, outsmart or trick the Metro service in any way or act on any other bad purpose."

Indklagede anfører følgende:

" NOTE! Due to problems with the complainant's payment of the complaint fee, the case was not registered in a timely manner with the Appeals Board, which caused a payment reminder from Metro Service A/S, but we have canceled that payment reminder..

Please find enclosed our comments regarding the above mentioned complaint.

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 travel document on demand to the ticket inspectors.

In cases where passengers are not able to present a valid travel document, 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 and on Din Offentlige Transport -<https://dinoffentligetransport.dk/kundeservice/raad-og-regler/alle-rejseregler/> 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 travel document. They do not distinguish between an intentional or unintentional mistake. They only check the validity of the travel document. 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 his companion, who both are German citizens was met by a steward inspecting tickets on the 14th of August 2019 at app. 23:45 between Sundby station and Bella Center station. The complainant and his companion presented 3 tickets to the steward, but all 3 tickets had expired at. 22:00. As neither of the two travelers had a valid ticket, a fare evasion ticket was issued to each of them according to current regulations.

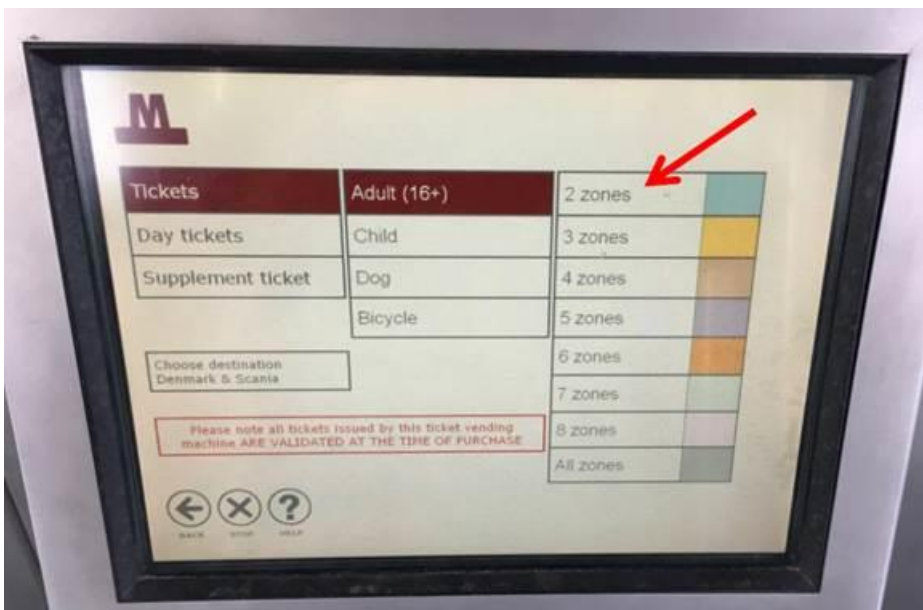
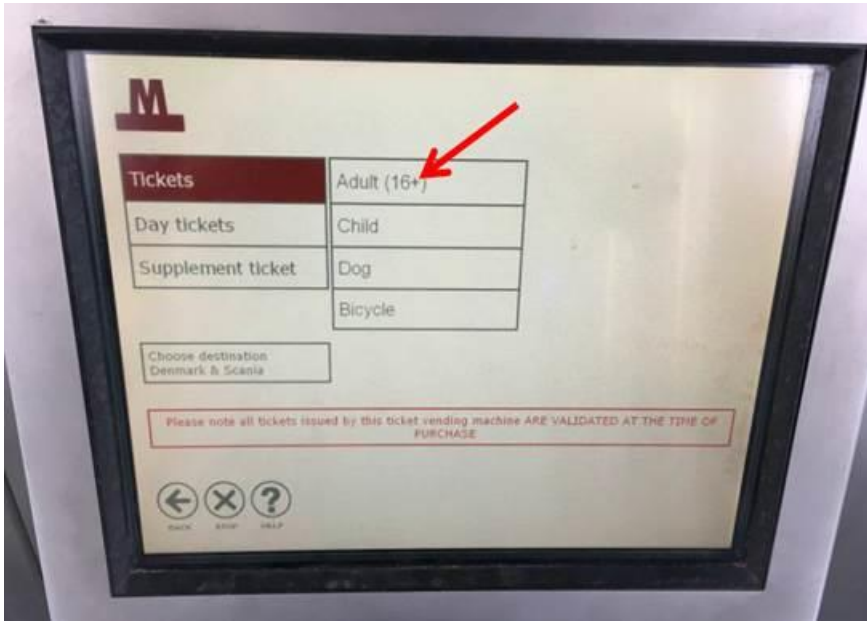
On the electronic fare evasion ticket, the steward has made the following remark:

14-08-2019 23:53 - stw: Pax havde 3 stk 2 Zones billetter som udløb kl 22. Pax forklarede han havde købt 4 billetter men at der kun kom 3 ud af automaten og han ikke vidste at den var tids bestemt. *Translation:* 14-08-2019 23:53 - stw: Pax had 3 2 Zones tickets expiring at 22. Pax explained that he had bought 4 tickets but that only 3 came out of the vending machine and he did not know it was timed.

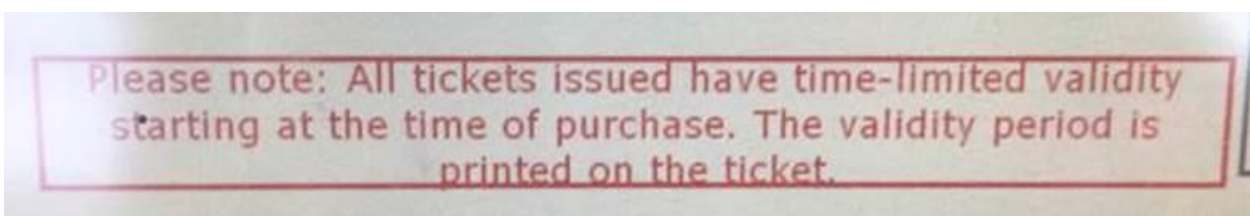
The complainant and his companion did not, in their inquiries, mention anything about having received only 3 tickets in the vending machine.

In his inquiries, the complainant explained that he and his companion were not aware of how the ticketing system works in Copenhagen, but merely assumed that it worked the same way as in Germany, where you can buy all your tickets at once and then just validate them when you want to make use of them.

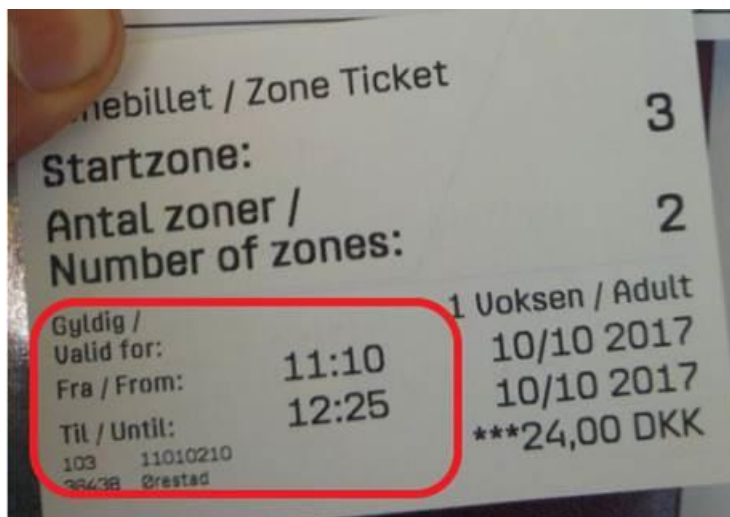
When you buy a ticket in one of our ticket vending machines, you are told, several times in the purchase process, that the ticket is valid from the time of purchase and in the zone and period you have chosen. See below examples from the purchase process, please ignore the red arrows which have nothing to do with the specific case:



And here is a close-up of the text on the screens:



The ticket itself also states the period of validity:



We are a little confused about the complainant's statement that they simply bought tickets and assumed that the system worked as in Germany.

Because it is impossible to timestamp/validate the tickets that the complainant and his companion got out of the ticket vending machine, we are surprised that the company did not read and checked the tickets an extra time when it was not possible to find a place to validate the previously purchased tickets.

The complainant has stated that they were in a hurry when buying tickets at the Bella Center station because the train was arriving and that they therefore simply assumed that the ticketing system worked at home.

The metro runs around the clock and there are never many minutes between train departures. While we may understand that you can be in a hurry, however, we do not think that busyness can be an excuse for not paying attention to ticket purchases, especially when you are in another country. To assume that the system works as in the home country is, in our opinion, not sufficient.

We must emphasize that we certainly do not consider passengers without a valid ticket as cheaters or anything bad, but the requirement for a valid ticket applies to everyone, whether you are a resident or a tourist, a child or an adult, a student or a pensioner, etc.

Of course, the best thing is to have sought information before arriving in Copenhagen. But even though you have not had the opportunity to be informed in advance, we believe that with the red text on the screen during the purchase process and with the text on the ticket itself for validity as well as with the information boards and the yellow call points at the stations, we believe that there are optimal opportunities to familiarize yourself with how the ticketing system works in Copenhagen and therefore maintains our demand for payment of the control fees xx and xx of each DKK 750 totaling DKK 1,500.00."

Hertil har klageren bemærket:

"

We have read the response from the Metro Company very carefully. We hereby want to state our point of view regarding case no. 2019-0263:

As mentioned before, we know that we didn't use the metro payment system the way it's supposed to be and the mistakes we have made and don't want them to be ignored or anything like that.

But still our point is that we paid for the services we used:

We bought 4 single tickets to get to the city center and back to Bella Center Station later.

Wertstellung: 15.08.19		
SpotifyStockholm	-9,99	EUR
PARKERINGSAUTOMATER...	-13,41	EUR
	-100,00	DKK
BELLA CENTER STATIONK...	-12,87	EUR
	-96,00	DKK
HUSET UNDER BROSTOCK...	-36,76	EUR
	-390,00	SEK
HUSET UNDER BROSTOCK...	-18,10	EUR
	-192,00	SEK

(bank statement showing that we paid the amount of 96 DKK, which is the price for 4 single tickets at Bella Center Station). As the metroservice is mentioning in their statement, we only received 3 tickets from the vending machine. Due to time issues we noticed it, when we were already inside the metro-train. We think it is just understandable that we didn't want to "waste" the one night we had in Copenhagen to see the customer service to handle this situation which probably would have made our trip to the city kind of useless as it was already pretty late when we started. However, we know these are just excuses and of course we could have done better but still our main point remains: We paid for the services we used."

Hertil har indklagede bemærket:

"The complainants have sent a copy of a bank statement to show that they have spent DKK 96, - in the ticket machine at Bella Center station.

We are not entirely sure of the reason for sending the bank statement as the fare evasion tickets in this case are not issued on the basis of missing tickets, but that the tickets presented were expired by almost 2 hours.

And if you travel on tickets that have expired, then you do not have valid travel permits and must accept having to pay fare evasion tickets.

Therefore, with reference to the above and to our previously submitted reply, we maintain our claim.

Finally, we must draw attention to previously comparable complaint cases (2019-0085 and 2019-0092), where the decisions was made in favor of the respondent company, and which also dealt with expired tickets and where the passengers were tourists who assumed that the travel rules and system in Denmark were the same as in their home country."

På ankenævnets vegne

Tine Vuust
Nævnensformand