

## AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2022-0096
- Klageren:** XX på egne vegne og på vegne af sin mor YY  
1250 København K
- Indklagede:** Metroselskabet I/S v/Metro Service A/S  
**CVR-nummer:** 21 26 38 34
- Klagen vedrører:** 2 kontrolafgifter på hver 750 kr. grundet rejse med metroen med DSB Orange Fribilletter
- Parternes krav:** Klageren ønsker, at ankenævnet annullerer kontrolafgifterne, og gør bl.a. gældende, at hendes mor dagen forinden havde rejst på en billet i DSB-appen, der var gyldig til metroen, hvorfor det ikke giver mening, at der tilbydes køb af en billet i samme app, der ikke er gyldig til metroen
- Indklagede fastholder kontrolafgifterne
- Ankenævnets sammensætning:** Nævningsformand, landsdommer Tine Vuust  
Gry Midttun  
Torben Steenberg  
Helle Berg Johansen  
Anna Langskov Lorentzen

Ankenævnet for Bus, Tog og Metro har på sit møde den 12. september 2022 truffet følgende

### **AFGØRELSE:**

Metro Service er berettiget til at opretholde kravet om betaling af kontrolafgifterne på i alt 1.500 kr.

Beløbet skal betales til Metro Service, der sender betalingsoplysninger til klageren og hendes mor.

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](http://www.domstol.dk), [www.advokatnoeglen.dk](http://www.advokatnoeglen.dk) og /eller eget forsikringselskab om eventuel forsikringsretshjælp.

## SAGENS OMSTÆNDIGHEDER:

Klageren er ikke-dansktalende, bosiddende i København og arbejder i Vordingborg, hvortil hun rejser på DSB Orangebilletter eller med Rejsekort. Udgifterne hertil bliver refunderet af hendes arbejdsgiver. Den 7. april 2022 fik hun besøg af sin mor, som hun hentede i Kastrup Lufthavn. Derefter skulle de retur til klagerens bopæl med metroen til Kongens Nytorv st. I den forbindelse købte klageren en enkeltbillet til moren i DSB-appen. Billetten så således ud:

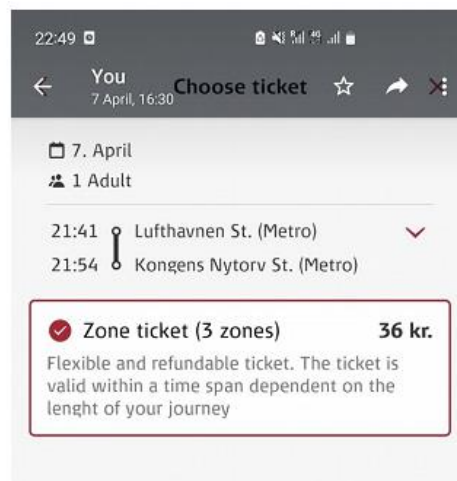


foto 1

Den følgende dag skulle de rejse til Vordingborg st. fra Kongens Nytorv st., og klageren indtastede disse destinationer i DSB-appen for at købe en billet til dem. Her fik hun nedennævnte skærmbillede, og hun regnede derfor med, at hun ved at købe en Orange Fribillet havde gyldig rejsehjemmel til den fulde rejse inklusive metrorejsen, når dette blev vist som her:

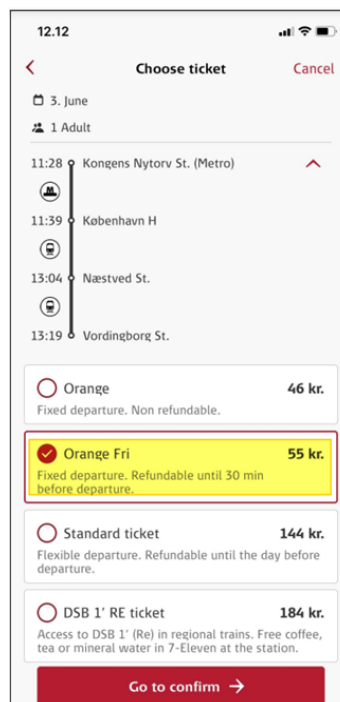


foto 2

Imidlertid overså klageren det følgende skærbillede i købsflow'et, hvor kunden får oplyst, at billetten ikke er gyldig til den del af rejsen, der foregår med metroen [fremhævet med gult]:

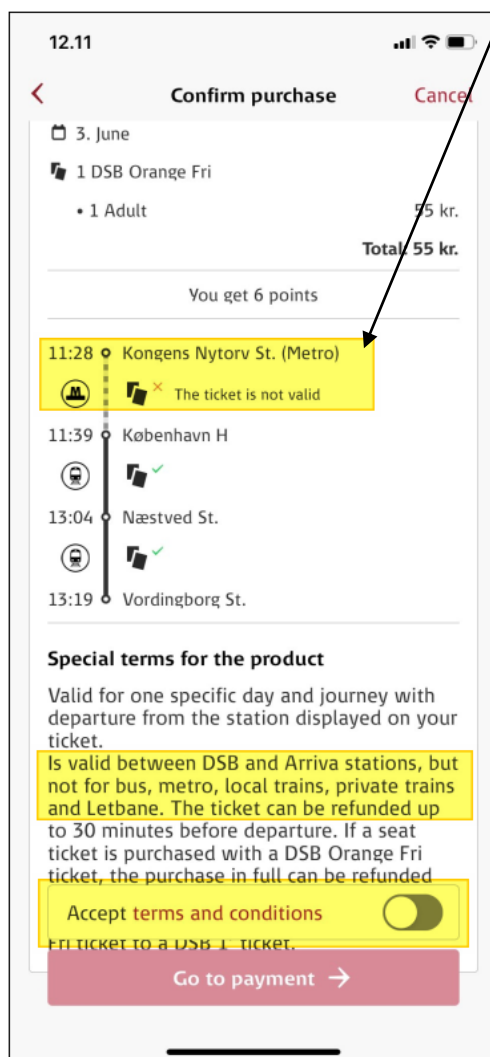


foto 3

Klageren har gjort gældende, at hun ikke mener, at købsflow'et så ud på denne måde, og under alle omstændigheder troede hun, at Orange Fribilletten var gyldig, fordi den endelige billet, hun modtog i appen, så således ud:

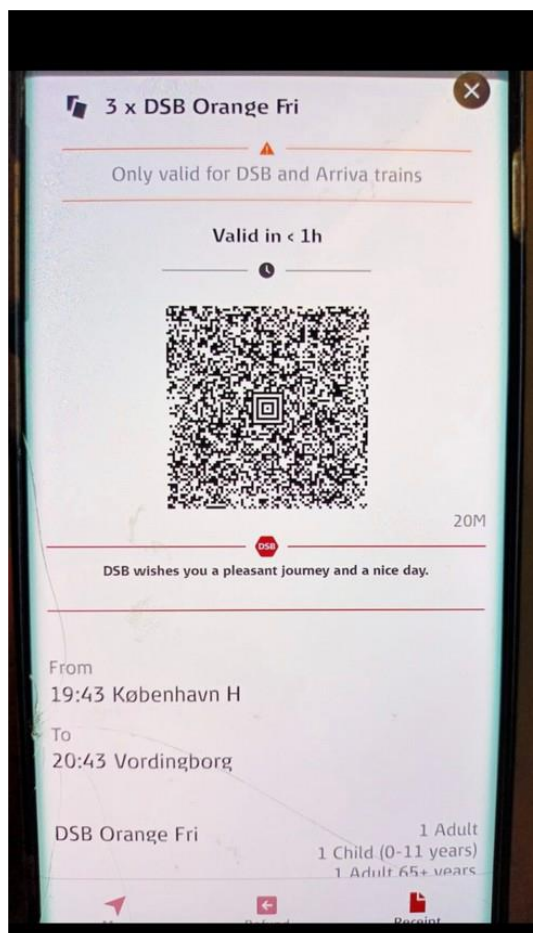


foto 4

Efter at klageren og hendes mor var steget om bord på metroen, blev deres billetter kontrolleret, og da Orange Fribilletter ikke er gyldig til rejse med metroen, blev de begge pålagt en kontrolafgift på 750 kr.

Dette klagede klageren over til Metro Service den 16. april 2022 og gjorde gældende, at hun viste for stewarden, hvordan appen ved hendes billetbestillingen havde vist hele rejsen fra Kongens Nytorv til Vordingborg st., at hun tilbød stewarden at checke ind med sit Rejsekort, at hendes arbejde betaler for hendes transport, hvorfor der ikke er nogen grund til, at hun skulle forsøge at snyde for at spare 18 kr., og at moren den foregående dag havde kunnet benytte samme DSB-app til at købe gyldig billet til metroen.

Metro Service fastholdt kontrolafgifterne den 20. april 2022, da de særlige vilkår for billetterne havde fremgået i forbindelse med købet.

### **ANKENÆVNETS BEGRUNDELSE FOR AFGØRELSEN:**

Klageren indtastede sin og morens rejses faktiske til- og fra-destinationer i DSB-appen og fik i forbindelse med billetternes udstedelse et skærmbillede som gengivet på foto 3 ovenfor. Af dette fremgår det, at kunden oplyses om, at billetten ikke er gyldig til den del af rejsen, der foregår med metroen.

Dette fremgår desuden af de særlige vilkår for billetten, der også fremkommer på skærmen, og som kunden accepterer ved at godkende handelsbetingelserne, inden købet gennemføres.

Derudover stod det på den endelige billet, som klageren modtog i appen, at billetten kun var gyldig i DSB og Arriva tog, som vist på foto 4: "Only valid for DSB and Arriva trains".

Herefter finder ankenævnet, at det var tilstrækkeligt tydeligt oplyst, at der for gjaldt særlige vilkår og begrænsninger for Orange Fribilletten, herunder at billetten ikke kunne anvendes til rejse med metroen.

På den baggrund finder ankenævnet videre, at kontrolafgifterne til klageren og hendes mor blev pålagt med rette.

Ankenævnet har tidligere udtalt, at det giver god mening, at kunden tilbydes muligheden for at købe en Orange- eller Orange Fribillet, selv om billetten kræver tilkøb af yderligere billet, da den samlede billetpris kan være lavere end ved køb af en DSB Standardbillet.

Som følge af det anførte, og da det ikke er en betingelse for at pålægge en passager en kontrolafgift, at passageren bevidst har søgt at unddrage sig at betale for hele eller dele af rejsen, har der ikke foreligget sådanne særlige omstændigheder, at kontrolafgifterne skal frafaldes.

Det kan ikke føre til en anden vurdering, at klageren får godtgjort udgifterne til rejsen af sin arbejdsgiver.

## **RETSGRUNDLAG:**

Ifølge § 2, stk. 1, jf. § 3 nr. 3 i lovebekendtgørelse nr. 686 af 27. maj 2015 om lov om jernbaner, gælder loven også for metroen. Ifølge § 2 i lov nr. 206 af 5. marts 2019 om ændring af lov om trafikskaber og jernbaneloven fremgår det, at jernbanelovens § 14, stk. 1, affattes således:

»Jernbanevirksomheder, der via kontrakt udfører offentlig servicetrafik, kan opkræve kontrolafgifter, ekspeditionsgebyrer og rejsekortfordringer.«

§ 14, stk. 2 og 4, ophæves, og stk. 3 bliver herefter stk. 2. Stk. 3 har følgende ordlyd:

"Passagerer, der ikke er i besiddelse af gyldig rejsehjemmel, har pligt til på forlangende at forevise legitimation for jernbanevirksomhedens personale med henblik på at fastslå passagerens identitet."

I de fælles landsdækkende rejseregler (forretningsbetingelser), som trafikvirksomhederne har vedtaget, præciseres hjemmelen til udstedelse af 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. Som passager uden gyldig rejsehjemmel betragtes også passager, der benytter kort med begrænset tidsgyldighed (f.eks. pensionistkort) uden for kortets gyldighedstid, eller hvis andre rejsebegrænsninger ikke overholdes.

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

### **Klageren anfører følgende:**

“I got a fee having use an orange ticket bought from the app that it didn't mention i could not use for the 4 stops I did by metro to reach the Copenhagen central station. I moved to Denmark with my toddler not so long ago and I don't speak the language yet. I am working as an artist in Vordingborg, even if I live in Copenhagen, therefore I often use my rejsekort card to travel back and forth. Since this time I have asked my mum to travel all the way from Italy to take care of her nephew for the time I was working (out of normal hours of daycare and including weekend), and my employer wouldn't refund her ticket but only mine, I decided to organize better the trip and order orange tickets, even cheaper for my mum (who is 65+). I was all set, travelling with my mum and my baby, when a person to check came in the metro and very rudely asked for the tickets; I showed him the orange tickets I had bought through the DSB app and he said it didn't count for the metro (please you can verify this if you try to buy it on the app that is not mentioned). I showed him that the app clearly said it was valid for the whole parcour from my home in Copenhagen to Vordingborg station and didn't mention that it was not valid for the metro and that I didn't know and I even proposed to rush down and use the rejsekort for that; but he didn't believe my good intention at all...I told him I would never try to cheat to save 18kr (also considering that my employer would have pay the ticket for me!), and what a shame in front of my mum (who is moreover a layer!) and my baby...what kind of education I would give..and that moreover my job would have paid for my ticket so I would have had no reasons for doing that; this person really treated me like if a was a tief and made me so desperate...he gave the fine of 750 both to me and my mum (who didn't even do anything concerning tickets). I was even more sure that those thicketts would even cover the whole parcour, since the night before coming from airport my mum bought her own ticket airport/kongens nytorv on the same app, and it worked perfectly fine, so I would have never imagine that in this case there was another rule. I can prove all of this I have said, I would really appreciate your trust, also considering that I am a single mum and don't have a stady job and this amount is really a lot of money and I would have never have done it intentionally. “

### **Indklagede anfører følgende:**

“It is the adult daughter who complains on behalf of herself and her mother, and since the complaints are identical, we treat the case as one.

In the specific case, the complainant and her mother were checked on 8 April 2022 at 19:27 between Kongens Nytorv station - Hovedbanen station. The complainants presented Orange Tickets, which, however, is not a valid ticket for travel by metro.

A steward may not carry out any kind of case processing but must issue a fare evasion ticket if a valid ticket cannot be presented and inform the passenger that it is possible to send a written complaint to the Customer Service Department.

As the complainants were not in possession of valid tickets, fare evasion tickets were issued in accordance with applicable rules.

The metro runs, like the other public transport in the Greater Copenhagen area, according to a self-service system, where it is the passenger's own responsibility before boarding, to secure a valid ticket or card, which can be presented on request.

In cases where a valid travel document cannot be presented on request, it must be accepted to pay a control fee, which for an adult amount to DKK 750. This basic rule is a prerequisite for the self-service system that applies to travel by public transport in the Greater Copenhagen area.

The above also appears from the common Travel Rules, which are on Din Offentlige Transport - <https://dinoffentligetransport.dk/en/customer-service/rules-and-guidelines/all-travel-regulations/>, and this also appears from the information boards, which are set up at all stations. On the information boards, attention is also drawn to the yellow call points, which can be found in several places at all our stations. These call points put the passenger in direct contact with an operator in our control room, who is staffed 24 hours a day. This operator will be able to advise and guide regarding all issues related to the metro.

The complainant has stated that she moved to Denmark not so long ago and that she does not know the language yet. To help with childcare, she has asked her mother to come to Denmark. In the control situation, the complainant presented her Danish Sundhedsbevis as identification and the card states that the complainant has a Danish CPR-number and that the Sundhedsbevis was issued on 11 June 2021.

The complainant has also explained that she has bought the Orange Tickets in DSB's app, and that it does not appear anywhere that Orange Tickets are not valid in the Metro.

But that is not correct.

Regardless of whether you buy Orange tickets via DSB's website or whether you buy the tickets in DSB's app, you cannot complete the ticket order and complete the purchase until you have clicked on and accepted the terms and conditions. Orange tickets are a heavily discounted product with very limited use, and it is therefore carefully described in the purchase flow. The complainant has used the English-language DSB app, and the illustrations below show which screenshots you are presented with before you can pay for the ticket.

1st illustration shows which tickets / prices you can choose for the desired trip. The complainant chose Orange Fri. [ Udeladt, da er gengivet ovenfor].

2<sup>nd</sup> Illustration clearly shows that if you have chosen an Orange ticket, the ticket is not valid from Kongens Nytorv to Hovedbanen, and it is also written in the text that the ticket is only valid between DSB and Arriva stations, but not for travel by bus, metro, local trains, private trains and Letbane. It is not possible to complete the purchase until you have accepted the terms and conditions. [Udelandt, da det er gengivet ovenfor I sagsfremstillingen].

We apologize once again if the complainant felt badly treated by the steward, and we would like to emphasize that we certainly do not regard the complainant and her mother as dishonest persons. The stewards must be polite and service minded, but if a valid ticket cannot be presented in the control situation, the stewards are required to issue a fare evasion ticket - it is thus not possible to rush off the train to obtain a valid ticket or check in Rejsekortet.

As it is not possible to buy Orange tickets without accepting the special conditions that apply to the product, it is our claim that the complainant has been clearly informed about the limitations of Orange tickets, and with reference to the Common Travel Rules (see especially the clip below) , we maintain that the fare evasion tickets to the complainant and her mother have been issued correctly and we therefore maintain our claim for payment of both fees; DKK 1.500.

We have previously offered the complainant and her mother the opportunity to pay in 3 installments under applicable conditions, and that offer is still valid.

## 2.7. Inspection fee

### 2.7.1. Inspection of travel documents

Customers who do not, when requested, present valid travel documents, including having checked in correctly on Rejsekort for their travel, must pay an inspection fee. This also applies if the customer has purchased a travel document via a mobile device that cannot be inspected, for example if it has run out of power or been broken.

A customer who uses a card that is valid for a specific period of time (e.g. a pensioner's card) outside the card's term of validity, or if other means of transport or travel time restrictions are not respected (e.g. lack of surcharge for DSB 1' or for the Metro, or carrying a bicycle outside the times when they are permitted) is also deemed to be a customer without a valid travel document.

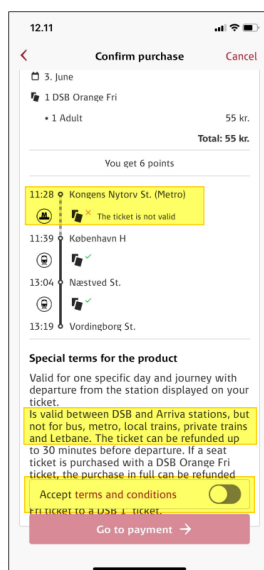
Customers travelling alone on someone else's Rejsekort Personal or under a customer category to which they are not entitled will be travelling without a valid travel document.

The card's owner must always be checked in on the Rejsekort on journeys where a Rejsekort Personal is used. Furthermore, the Rejsekort must not be so worn/covered that the name cannot be read.

## Til dette har klageren svaret:

“How can I pay this?

You didn't put any instructions on that



## Til dette har Metro Service svaret:

“We simply do not understand the complainant's latest remark.

The complainant has attached a copy of a screenshot which we included in our case response of 20 May 2022, and which is an illustration of what the purchase flow looked like on the cell phone when the complainants bought Orange tickets.”

## Hertil har klageren anført til specifikke afsnit i Metro Services første svar:

“This is very tricky because as I just said the evening before my mum bought a ticket from the airport and it was valid on the metro (see screenshot down here) [Udeladt. Er gengivet i sagsfremstillingen ovenfor].

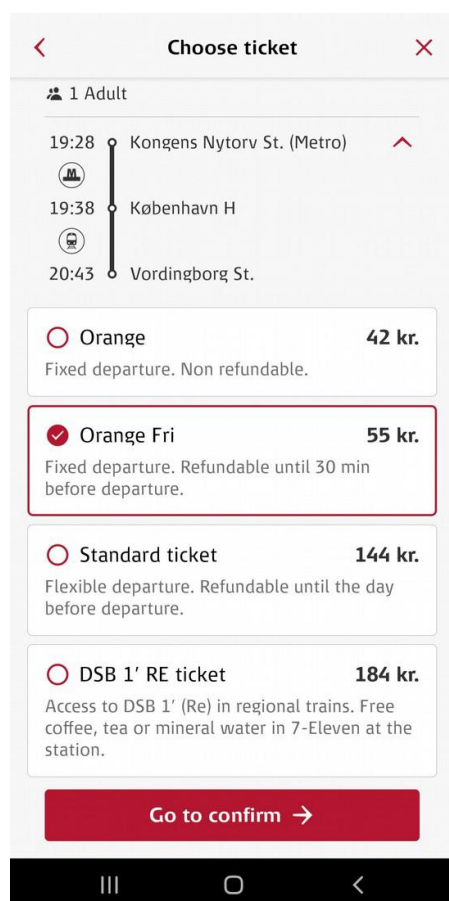


Og videre:

“This is very personal, to judge how long does a person take in order to adapt to a place and know the rules; I have been mostly alone with my toddler and in a complex parenthood situation. So not many chances of traveling. And anyways as I said it's very subjective. I would like to see what would happen in a reverse situation when a Scandinavian person would have to understand Italian rules.”

Og videre:

“So the logic of buying ticket on an app is that should be fast and intuitive. In the first step while buying a ticket it says “orange ticket “and nothing more – moreover if the ticket is only valid from the central station and not as they say from the metro, it's absolutely very misleading to put it like that (see the screenshot below) – it should say already here very clearly “from the central station”



regarding the second illustration:

since there is no date in that screenshots, I'm not sure that the text looked like this on the app already on the date when I bought the ticket, since I've recently noticed that the text change according to some time of the year/offers occurring. So I would ask to verify that.

Secondly, as I said, the practicality of buying a ticket on the app is to do it quite fast and of course it's not evident to read all the text about terms and conditions when it looks quite clear in the previous spot that I am buying a ticket from the Metro station Kongens Nytorv to Vordingborg station. Especially I

have to say being a single mum with a toddler is not like having a lots of time to read all of that  
This is what I saw buying my ticket. [Udeladt, da er gengivet ovenfor i sagsfremstillingen].

Anyhow I still have hard time understanding why you think I wouldn't just use the rejsekort to pay the ticket for the metro if I knew that I couldn't just use the ticket I bought, since, as I said, I would even get it refunded by my employer.

Secondly, it's very difficult for me to find this time to sit down and write this letter, while for Metro and bus service there is a person that gets paid to do this job. I'm saying this to state that I wouldn't use this time to write it if paying those 1500kr wouldn't make a difference in my budget, because it does a big difference! Anyhow I find this situation so terribly unjust towards me."

På ankenævnets vegne



Tine Vuust  
Nævnensformand