

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2022-0131
- Klageren:** XX
Nederlandene
- Indklagede:** Metroselskabet I/S v/Metro Service A/S
CVR-nummer: 21 26 38 34
- Klagen vedrører:** Kontrolafgift på 750 kr. grundet rejse på udløbet billet
- Parternes krav:** Klageren ønsker, at ankenævnet annullerer kontrolafgiften, og gør gældende, at han to dage tidligere havde oplevet, at ingen af hans betalingskort virkede i billetautomaten, hvorfor han den omhandlede dag købte billetten i god tid for at være sikker på at have gyldig rejsehjemmel, når han skulle med flyet hjem fra lufthavnen
- Indklagede fastholder kontrolafgiften
- Ankenævnets sammensætning:** Nævnensformand, 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 kontrolafgiften på 750 kr.

Beløbet skal betales til Metro Service, der 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 forsikringselskab om eventuel forsikringsretshjælp.

SAGENS OMSTÆNDIGHEDER:

Klageren, der er hollandsk, skulle den 31. maj 2022 på en 2-dages konference i København. Da han landede i lufthavnen og skulle videre med Metroen til sit hotel på Rådhuspladsen, kunne han imidlertid ikke få nogen af sine betalingskort til at virke i billetautomaterne i lufthavnen, hvorfor han måtte tage en taxa, der kostede 411 kr.

Da han skulle retur med flyveren hjem den 2. juni 2022, ville han sikre sig at kunne købe en billet, hvorfor han kl. 13:20 gik ned på Metrostationen ved sit hotel og købte en billet til 3 zoner. Billetten så således ud:



Derefter gik klageren tilbage på sit hotel for at arbejde noget mere, inden han omkring kl. 16 gik ned og tog en Metro til Lufthavnen st. Men inden han nåede dertil, blev hans billet kontrolleret, og da den var udløbet kl. 14:50, blev han kl. 16:14 pålagt en kontrolafgift på 750 kr.

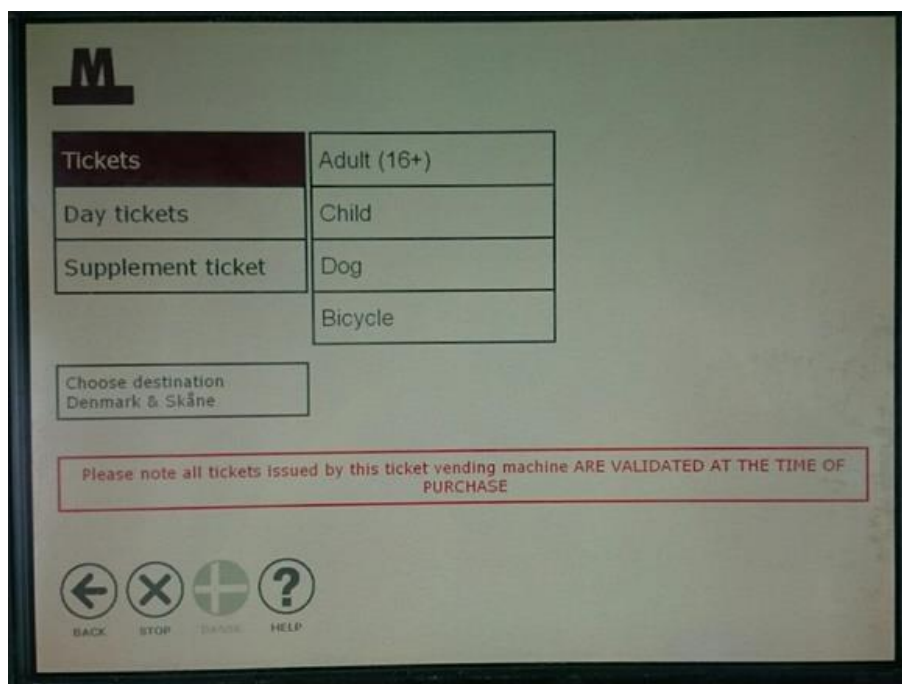
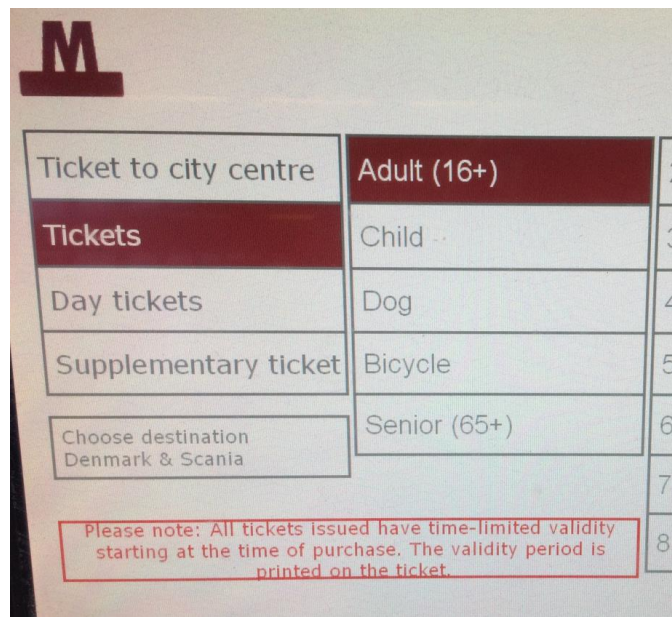
Dette klagede han over til Metro Service den følgende dag den 3. juni 2022, og gjorde gældende, at han havde været uvidende om, at billetten var udløbet, og at han havde betalt for den.

Metro Service fastholdt kontrolafgiften og henviste til, at det fremgik af selve billetten, hvornår den udløb, og at det desuden havde fremgået på skærmen i forbindelse med købet.

Klageren rettede flere henvendelser til Metro Service, hvori han gjorde gældende, at de konkrete omstændigheder måtte tages i betragtning, og at Metro Service ikke kan behandle alle sager ens.

Metro Service fastholdt kontrolafgiften og henviste til, at omstændighederne i klagerens sag ikke kunne føre til et andet resultat, og at de behandlede alle kunder ens, uanset at kunden ikke havde haft til hensigt at rejse uden gyldig rejsehjemmel.

Information på engelsk i købsflowet i forbindelse med køb af billetter:



ANKENÆVNETS BEGRUNDELSE FOR AFGØRELSEN:

Det er ved køb af billet i billetautomat tydeligt fremhævet med rød skrift i købsflow'et, at billetten er gældende fra udstedelsestidspunktet, som gengivet ovenfor. På selve billetten er der desuden information på dansk og engelsk til kunden om, hvornår billetten er gyldig fra og til. Dette var også var tilfældet for klagerens billet, der er afbilledet ovenfor.

Herefter finder ankenævnet, at det var tilstrækkeligt tydeligt oplyst til klageren, hvornår billetten ikke længere var gyldig, nemlig ved påstigning efter kl. 14:50.

Da klageren blev mødt af kontrolløren, var klokken ca. 16:15 og kontrolafgiften for manglende gyldig billet, blev dermed pålagt med rette.

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

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. Ifølge § 2 i lov nr. 206 af 5. marts 2019 om ændring af lov om trafikselskaber 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, skal betale en kontrolafgift på 750 kr. for voksne.

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører følgende:

“I am 60 years old, a Dutch citizen, have university education, I am founder/ director of a defense company. For that reason, I visited the Nordic Defense Industry Seminar at the Industri Hus at the Radhuspladsen. I had made a booking for two nights at the Square hotel, also at Radhuspladsen.

I had found out that the METRO station is right in front.

However, when I arrived on Tuesday night, 31 st May 2022, at Kastrup airport, I could not obtain a ticket for the metro.

Both my Mastercard and Maestroc card did not work in several of the ticket machines pictured below.



Therefore, I took an expensive taxi (411 DK).



As I questioned my own dexterity of remaining a “nomad”, I wanted to be sure that I had obtained a ticket before leaving the Square hotel. I bought the ticket at 13.20 hrs.



Then, I changed clothes at the Square hotel, worked a few hours and bought myself a refreshment of the 7for11 at the corner of the hotel at Radhuspladsen. Timestamp 15.52 hrs. I took the Metro!



Nearby the airport, a steward noted that my ticket had expired, was not valid, something I was not aware

off. I had to show my idea, fill out a form and got a DKK 750 fine. I think the procedure was not appropriate. The steward did not ask any question, did not listen to my explanation. How should I have known when I paid for the ticket that needs to be done BEFORE you get the ticket in the first place.

The fine is unreasonable.

1

I assume that Danish law is, like Dutch law, also based upon reasonableness and fairness.

1

On the internet, when Googling “evasion meaning”, the answer is ...

“””

The action of evading something

“””

I cannot think of any action I took to avoid paying or anything else.

2

Then, on

“”””””””””

I do understand that it was a regrettable mistake, and you didn't attend to travel with the metro without a valid ticket. However, it is not possible for us to take the intention of the passenger and good faith and former travel historic into consideration, I am very sorry. We are obligated to treat all passengers equally according to the Joint National Travel Regulations.

“”””””””””

7

I am not sure why it would not be possible to take my “travel history” in to account.

In these digital times, that should not be a problem in a Western society like Denmark.

I fully agree that all passengers should be treated equal, however taking their circumstances in to account though, especially when proven.

What would your decision be if somebody doesnot by a ticket because he/she is badly wounded and takes the metro to the nearest emergency hospital?”

Indklagede anfører følgende:

“From the complainant's letter to the Board of Appeal we can read that he is offended by the term ‘fare evasion ticket’. We are sorry about this, as it is merely the terminology we use in our daily work, but we would like to accommodate the complainant and call the control fee a fine in this specific case.

In the letter to the Appeals Board, the complainant also asks if we give a fine to a person who has been badly injured and take the metro to the nearest emergency hospital without buying a ticket. We do not see the connection with the complainant's case, but we can reassure that if a seriously injured person is met by a steward in the metro, first aid is provided immediately, and an ambulance is called.

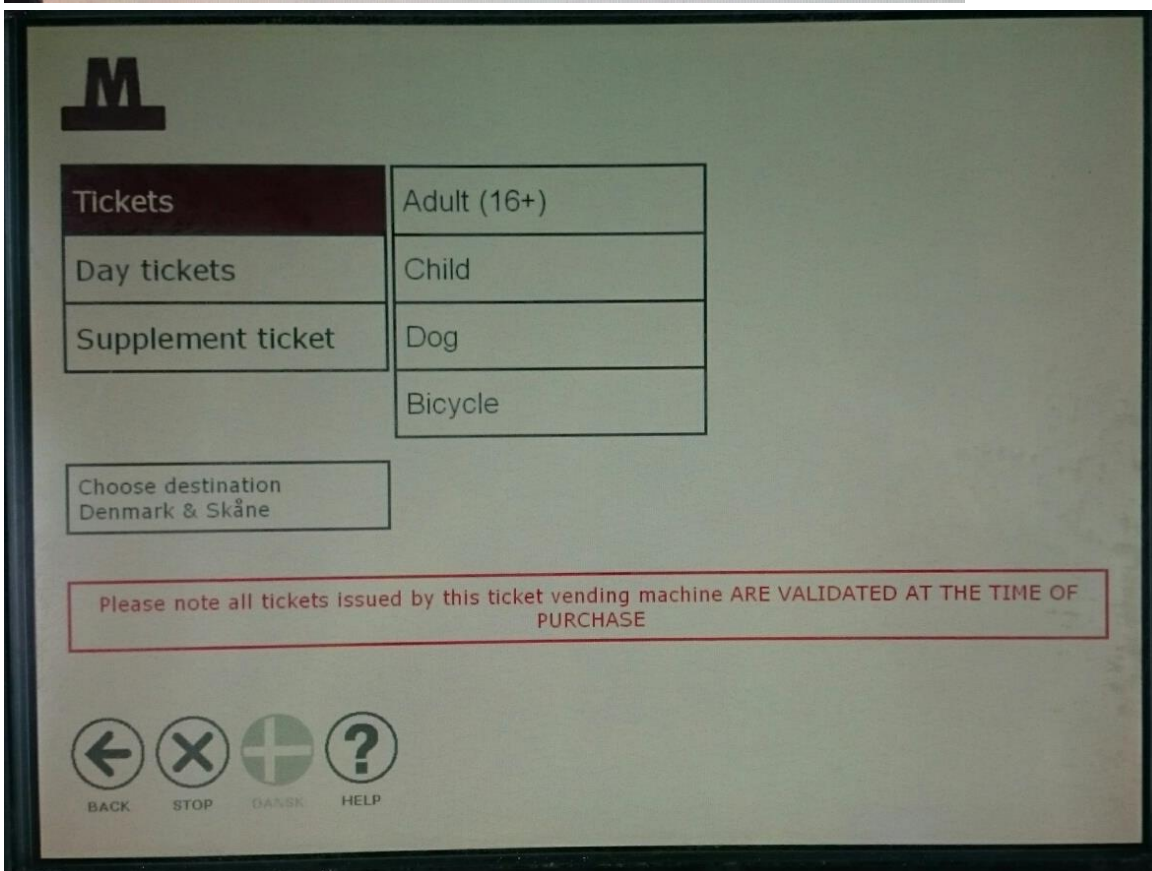
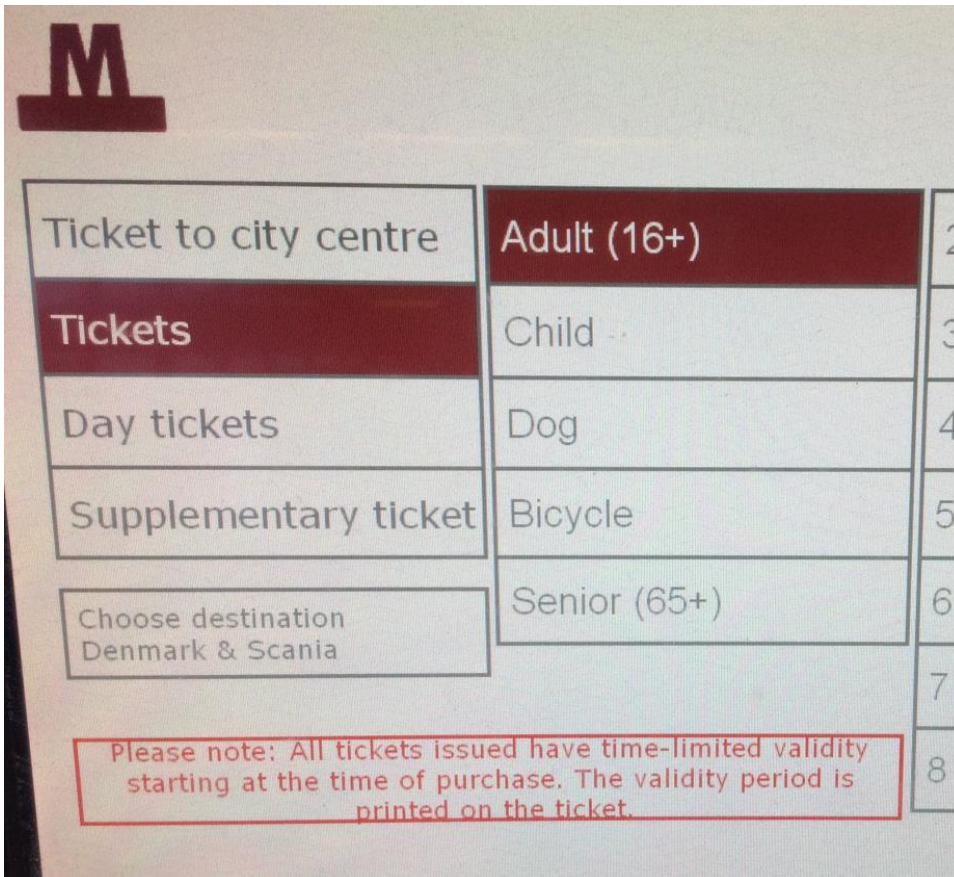
Like all other means of public transportation in the greater Copenhagen area, the Copenhagen Metro employs a self-service system, where the passenger is responsible for being in possession of a valid ticket, for the entire journey, before boarding the train. Passengers must be able to present a valid travel document on demand to the ticket inspectors.

In cases where passengers are not able to present a valid travel document, a fine 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 in The Joint National Travel Regulations which we have attached as well as on our information boards which are placed at every station. The information boards contain travel information in both English and Danish.

In the case in question, the complainant was met by a steward inspecting tickets on the 2 June 2022 at app. 16:14 between Amager Strand station and Lufthavnen /CPH station. The complainant presented a ticket which, however, had expired. As the complainant thus did not have a valid ticket / card, a fine was issued in accordance with current rules.

The steward took a photo with his PDA of the ticket that the complainant presented in the control situation. As can be seen from the text on the ticket, the validity period is printed on the ticket itself. In the specific case, the ticket was purchased at 13:20 in Metro's ticket machine at Rådhuspladsen and was valid from the time of purchase and one and a half hours onwards; that is, until kl. 14:50, see below: [Udeladt. Gengivet ovenfor].

In addition to the validity being printed on the ticket itself, you will also be made aware of the validity time throughout the entire purchase flow, regardless of which Metro Ticket Machine you use and regardless of whether you choose Danish or English on the home screen, see below:



Although the complainant has carefully explained his arrival in Copenhagen, taxi driving, accommodation and more, it is indisputable that his ticket was not valid when he was in the metro on the way to the Airport on 2 June 2022 and such a fact does not give rise to a special treatment that could result in a cancellation of the fine.

We maintain that the fine has been imposed correctly and that the subsequent case processing is also correct and thus maintain our claim for payment of fine number 0090XXXX of 750 kroner.”

Til dette har klageren anført:

“1

I will not withdraw the appeal and I am prepared to go to court.

A matter of principle.

They may sue me.

2

I am inclined to believe that Danish law and Dutch law are more or less the same.

Circumstances do play a role in a legal procedure in the NL.

A violation does not mean necessarily “guilt”.

3

Somehow, my point of a badly injured person in the metro was misinterpreted, not addressed.

There is no statement that the wounded person would be fined or not because he or she did not have a ticket.

“Evasion” 😊

4

Again, I was not aware, being a non resident making that somehow plausible.

I only travelled once as timestamped information I provided underlines.

Please consider this when you come to your final decision.”

Hertil har indklagede svaret:

“It is beyond any doubt that the complainant did not have a valid ticket when there was a ticket inspection in the metro on 2 June, nor are there any special circumstances that should result in the complainant not having to pay the fine issued. We thus maintain our demand for payment.

We refer to the Joint National Travel Regulations which were attached to our response of 6 July, and draw particular attention to the following section:

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.

If the maximum time for a Rejsekort is exceeded, the Rejsekort will no longer be valid as a ticket and the customer risks being charged an inspection fee.

”

På ankenævnets vegne



Tine Vuust
Nævnformand