

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 23-0187
- Klageren:** XX
Tyskland
- Indklagede:** Metroselskabet I/S v/Metro Service A/S
CVR-nummer: 21 26 38 34
- Klagen vedrører:** Kontrolafgift på 750 kr. grundet rejse på Orange mobilbillet i Metroen
- Parternes krav:** Klageren ønsker, at ankenævnet annullerer kontrolafgiften, og gør gældende, at han efter indtastning af Lufthavnen st. som startdestination i DSBs billetapp fik forelagt muligheden for at købe en Orangebillet, der lignede de andre billetter med undtagelse af prisen. Han overså den lille orange trekant i købsflow'et. Ugen inden købte han i samme DSB-app en billet, der var gyldig til en Metrostrækning
- Indklagede fastholder kontrolafgiften
- Ankenævnets sammensætning:** Nævnensformand, dommer Lone Bach Nielsen
Jacob Ruben Hansen
Torben Steenberg
Helle Berg Johansen
Dorte Lundqvist Bang

Ankenævnet for Bus, Tog og Metro har på sit møde den 16. august 2023 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, der sender betalingsoplysninger til klageren.

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

- oOo -

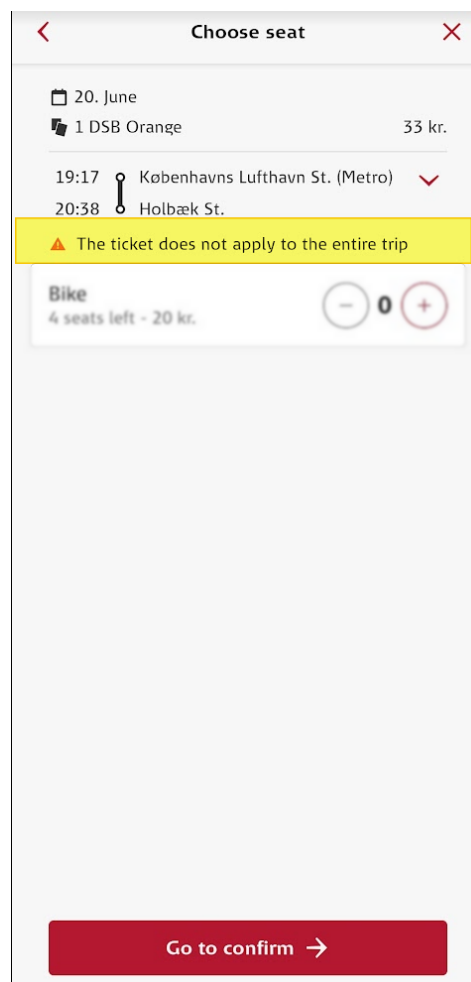
Hver af parterne kan anlægge sag ved domstolene om de forhold, som klagen har vedrørt.

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:

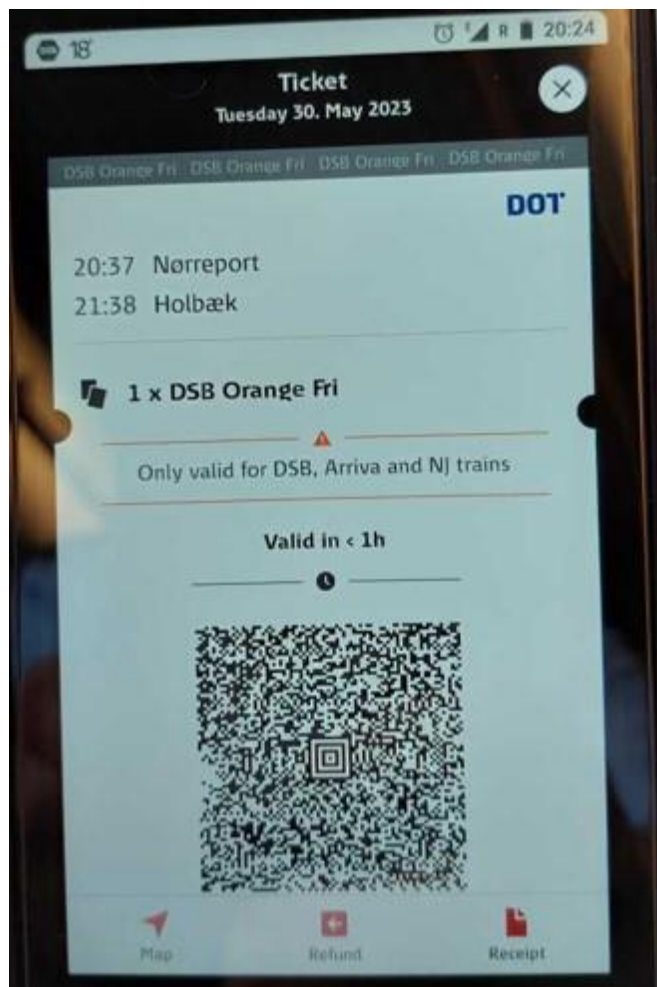
Klageren er fra Tyskland og var til møde i Danmark den 30. maj 2023, hvor han skulle rejse med Metroen fra Lufthavnen st. til Nørreport st. for at skifte til et DSB-tog til Holbæk st.

Forinden indtastede han destinationerne i DSB's mobilbillettapp og fik mulighed for at købe en Orangebillet. Dette valgte han, men overså i købsflow'et den orange advarselstrekant om, at billetten ikke var gyldig til den del af rejsen, der foregik med Metro.



Om bord på Metroen blev hans rejsehjemmel kontrolleret, og da billetten ikke var gyldig, blev han kl. 20:23 pålagt en kontrolafgift på 750 kr.

Billetten så således ud på hans telefon:



Han klagede over kontrolafgiften til Metro Service den 31. maj 2023 og gjorde følgende gældende:

I kindly ask you to cancel this fine for the following reason:
I bought a ticket from CPH Lufthavn to Holbæk St. (my final destination) via the DSB app. Because the DSB app regularly indicates connections that include Metro sections, I regarded it as self-evident that if I buy a ticket (Orange fri) that it covers the whole trip. I did not know that this is not always the case. Sometimes it is the case: Last week I bought a Metro-ticket via the DSB-app. The difference to yesterday was that it was "Metro-only" trip (from Lufthavn to Kongens Nytorv).
I did not mean to cheat, simply because it is even not necessary since the trip is payed by my employer.
And please inform me which ticket I have to buy if the trip encompasses a combination of Metro and DSB sections to avoid this unpleasant situation for all future.

Metro Service fastholdt kontrolafgiften den 1. juni 2023 og begrundede det således:

”

You have received an inspection fee as you presented an Orange ticket, which is not valid for travel on the metro.

I am very sorry, but we are unable to accommodate a reduction or cancellation of the inspection fee, as it was issued correctly in accordance with the national travel regulations for public transport, which you can find here: [All travel regulations - DOT \(dinoffentligetransport.dk\)](https://www.dinoffentligetransport.dk)

While most tickets are valid for use in all forms of public transportation in the Greater Copenhagen area and can be purchased in the DSB app, some discounted ticket types have limitations, and it is the passenger's responsibility to ensure that their ticket is valid for their chosen journey.

An Orange ticket is only valid for travel with DSB. If you search for a journey in the DSB app and choose an Orange ticket, you are informed that the Orange ticket does not cover the part of the journey that includes the metro. Please see the examples below:

The image displays three screenshots from the DSB app. The first two screenshots are from the 'Choose seat' screen. The first screenshot shows a warning message: 'The ticket does not apply to the entire trip'. The second screenshot shows a warning message: 'The ticket is not valid'. The third screenshot is from the 'Confirm purchase' screen, showing the total price of 124 kr. and a 'Go to payment' button.

Additionally, you are informed that the ticket is not valid for bus, metro, local trains, private trains and Letbane in the second paragraph of the special terms for the product, which is pictured below. These terms must be accepted, before it is possible to finalize the order and purchase the ticket:

Lastly, it is stated on the front of the ticket that it is only valid for DSB, Arriva and NJ trains: [udeladt, gengivet ovenfor]

Therefore, in this specific case, your ticket was valid for a journey with DSB, and the ticket was valid from 20:37 at Nørreport. The tickets validity expired the moment the train arrived at Holbæk Station at 21:38.

I understand this was a regrettable misunderstanding, but we cannot take good faith or intentions into consideration, unfortunately. Moreover, it is not possible to take travel history into consideration, as we are obligated to treat all customers equally and in accordance with the rules for public transport.

Like all other means of public transportation in the greater Copenhagen area, the Copenhagen Metro employs a selfservice system, where the passenger is responsible for being in possession of a valid ticket before boarding the train.

Therefore, we recommend you check the ticket you have purchased and ensure that it is valid for the trip you want to take. You will have the opportunity to purchase a correct ticket prior to entering the metro, if it turns out that your ticket is not valid.

Of course, you are always welcome to contact the steward on the station or use the yellow call points on all stations to contact our control room, if you require assistance or directions. We are staffed 24 hours a day and are able to assist you over the call point, or send a steward to the station if required.

Considering the above, you will be charged the full amount of the inspection fee, which we request that you pay as soon as possible."

ANKENÆVNETS BEGRUNDELSE FOR AFGØRELSEN:

3 medlemmer, Lone Bach Nielsen, Helle Berg Johansen og Dorte Lundqvist Bang, udtaler:

"Klageren indtastede afgang- og ankomstdestinationen, hvorunder han i det efterfølgende købsflow ved valg af Orangebillet, fik oplyst, at billetten ikke var gyldig til den del af rejsen, der foregik med Metro, og ved en pop-upbesked fik oplyst, at de særlige vilkår for billetten blandt andet var, at den ikke gjaldt i Metroen.

Klageren fik efter valg af Orangebilletten udstedt en billet gyldig fra Nørreport st. til Holbæk st. Her stod det anført på engelsk, at billetten kun var gyldig til DSB, NJ og Arriva.

Ankenævnet har tidligere udtalt, at det giver god mening, at kunden tilbydes Orangebilletter, selv om disse ikke er gyldige til hele den rejse, der indtastes, fordi der kan være mange penge at spare på togrejsen ved denne billettype, selv om der skal købes en yderligere separat billet.

Således som købsflow'et og den endelige billet er udformet, er det vores opfattelse, at kunden gøres tilstrækkeligt opmærksom på, at Orangebilletten ikke er gyldig til den del af rejsen, der foregår med Metro.

Vi finder derfor, at klageren ikke med rette kunne regne med, at han kunne rejse med Metroen til Nørreport st. på en billet, der var gyldig fra Nørreport st. til Holbæk st.

Herefter blev kontrolafgiften pålagt med rette. Det er ikke en betingelse for at pålægge en kontrolafgift, at passageren har handlet bevidst, og vi finder, at der ikke har foreligget sådanne særlige omstændigheder, at kontrolafgiften skal frafaldes.

Vi konstaterer dog, at sager vedrørende rejse på Orangebilletter udgør en ikke-ubetydelig andel af sagsmængden, hvilket sandsynligvis beror på et stigende udbud af disse billetter, som ikke længere kræver, at rejsen krydser Storebælt. Vi har derfor behov for at understrege nødvendigheden af, at der gives tydelige oplysninger til kunden om tungtvejende forhold, der gælder for det udbudte produkt, særligt når konsekvensen kan være en kontrolafgift på 750 kr. Vi anbefaler derfor, at DSB overvejer, om billettens begrænsede anvendelsesområde kan gøres endnu tydeligere for kunden under hensyntagen til, at købet foregår på en mobiltelefonskærm."

2 medlemmer, Torben Steenberg og Jacob Ruben Hansen, udtaler:

”Billetten var ikke gyldig til Metrorejser, og kontrolafgiften blev pålagt med rette i selve kontrolsituationen.

På baggrund af at vi kan konstatere, at sager vedrørende rejse på Orangebilletter til stadighed udgør en ikke-ubetydelig andel af sagsmængden, tager vi dette som udtryk for, at kunderne ikke får tilstrækkelig tydelig information undervejs i købsflow’et. Der skal i forbrugerforhold gives tydelige oplysninger til forbrugeren/kunden om tungtvejende forhold.

Vi finder, at Orangebillettens begrænsede gyldighedsområde er tungtvejende, når konsekvensen kan være en kontrolafgift på 750 kr.

Det er problematisk, at kunden efter indtastning af en Metrostation, hvor Orangebilletter ikke kan benyttes, alligevel får tilbud om at købe en Orangebillet. På dette tidspunkt i bestillingsprocessen, hvor kunden skal beslutte sig for billettype, bør det gøres tydeligere for kunden, at Orangebillet ikke har et begrænset anvendelsesområde.

Mobilbilletter købt i apps foregår på mobiltelefon, der har en begrænset skærmstørrelse, hvorfor jeg finder, at informationsniveauet og det visuelle udtryk skal tage højde herfor. På baggrund af det anførte kan Metro Service ikke fastholde kontrolafgiften, men skal frafalde denne mod klagerens betaling for rejsen med Metroen.

Da der er tale om en praksisændring, skal Metro Service ikke betale sagsomkostninger til ankenævnet. Vi bemærker, at det er uden betydning, at Metro Service ikke selv har mulighed for at ændre informationen i DSB’s app, idet både Metro Service og DSB deltager i DOT-samarbejdet, der for kunden fremstår som en enhed.

Vi finder, at en eventuel omgåelsesrisiko vejere mindre tungt end forbrugeroplysningen. Der er desuden ikke risiko for konkret omgåelse, da klageren nu er vidende om billettens begrænsede gyldighedsområde og ikke en anden gang kan rejse på Orangebillet med bus, Metro, letbane eller Lokaltog. En generel omgåelsesrisiko imødegås ved, at det i situationen var berettiget at pålægge en kontrolafgift og ved en tydeligere forbrugerinformation.”

Der træffes afgørelse 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. 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.

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 rejsebegrænsninger ikke overholdes (f.eks. for hvornår cykler må medtages, eller om der er betalt metrotillæg). 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.

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører følgende:

“ Complaint is re. “inspection fee” for having an invalid ticket, bought via the DSB-app.

Case: I bought a ticket from CPH Lufthavn to Holbaek St. including a section covered by Metro (M2 to Noerreport). Not knowing that the Orange ticket does not cover the Metro section I bought an Orange ticket. Formally it is completely correct that I failed. I asked for a goodwill cancellation of the fee but Metro insisted on getting the fee. Since my employer is covering the fare it is absolutely useless for me to try to cheat. It happened for, say, suboptimal programming of the App.

If you look for a trip on the app, select a connection and click “buy”, you do not expect an offer that covers only parts of the trip, at least not without highlighting that only parts are covered. But this is exactly what happens: It appears a list, including “Orange”, and they all look the same (except the price), and it particularly does not say, that only parts of the trip are covered with “Orange”. Only in the second step, after having selected it, there is a tiny orange triangle saying this. I did not expect it at this stage, sorry, overlooked it – and bought the wrong ticket without noticing.

In my view this is a built-in misuse facilitation. Either it should not appear at all, or at least it should be clear in the first step, before selecting it, that not everything would be covered.

Therefore I am asking for a cancellation of the fee. You can be sure, this will not happen again, now having learned this lesson the hard way. Please consider that I am not Danish, not living in Denmark, so not as familiar with the details as a Danish citizen. I was the more surprised in this case, because the week before I was also in Copenhagen and had a trip that was completely done with Metro (from Lufthavn to Kongens Nytorv) – and bought it successfully via the DSB-app. I guess in this case “Orange” was not offered, for good reasons...”

Indklagede anfører følgende:

“ In the specific case, the complainant was met by our inspector May 30th, 2023, at 20:23 after the metro train had left Lergravsparken station in the direction of Nørreport station. The complainant presented a

DSB Orange ticket on his phone. Unfortunately, Orange tickets are not valid for journeys on the metro, and as the complainant had no other ticket, the steward issued an inspection fee in accordance with current regulations.

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 fare evasion ticket, 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 appears both on the information boards at the stations and in the Joint National Travel Regulations, which can be read in their entirety at this link: [Joint-National-Travel-Regulations.ashx \(rejsekort.dk\)](https://www.rejsekort.dk/Regulationer/Regulationer.aspx)

2.4. Purchase of travel document

Public transport in Denmark is an open system with widespread self-service, and it is therefore always the customer's responsibility to have a valid travel document upon boarding, including by ensuring that the Rejsekort has been checked in correctly. On receipt of a travel document, the customer must make sure that the single ticket is in accordance with requirements.

2.4.2. In particular concerning use of mobile products (delivered via text message or app)

It is the customer's responsibility to ensure that the travel document has been received on the mobile device before boarding. It is not sufficient that the order has commenced.

Throughout the journey, single tickets or cards must be available for inspection by staff. This takes place by scanning. The screen should be in such a condition that inspection is possible. No corrections may be made to the travel document.

The travel document is only valid for the phone number to which it was ordered and may not be forwarded and/or shared. Twice during the mobile product's term of validity, however, a customer profile on the DSB app or DOT app can be transferred to another mobile phone than the one on which the purchase was made, or the mobile product can be restored on a new mobile phone, on confirmation of a verification email.

With the purchase of mobile products, the terms and conditions for each product are accepted. The applicable terms and conditions are set out on the individual companies' websites (see section 17).



An Orange Ticket is a very special discounted ticket type with very limited use.

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 purchase until you have clicked on and accepted the terms and conditions. Orange tickets are a heavily discounted product with very limited use, and this 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.

Unfortunately, it is not possible to recreate the complainant's exact purchase back in time, so the photo documentation below is a similar purchase where the search was made on Tuesday 20 June 2023 (same day of the week) and at app. the same time.

The travel conditions for "Orange" and "Orange Fri" tickets are identical. The difference between the 2 types of tickets is that "Orange Fri" can be refunded up to 30 minutes before departure, and therefore costs a little extra.

First screenshot shows the very first page in the app where you have to choose whether you want a ticket or, for example, a commuter card.

After choosing 'ticket', you proceed to the next and **second** screenshot where you must enter the destination and travel time. The complainant chose from Københavns Lufthavn St. (Metro) to Holbæk St. on a Tuesday which resulted in different ticket options and the complainant chose a low price ticket.

On the **second** screenshot it says in red text "See travel info".

If you touch "See travel info", you are presented with the **third** screenshot where you are immediately made aware that this type of ticket is not valid for the entire journey – that part of the journey that is by Metro - but is only valid from Nørreport station with a DSB train.

Buy

Tickets

- One-way
Ticket and seat >
- ↔ Round-trip
Ticket and seat >

Commuter card

- 📄 Commuter Card & Commute20 >
- 📄 Öresund Card >

Extension
Can only be used with ticket or card

- 👤 Commuter seat
Only for commuters >
- 1' DSB 1' supplement
Only for commuters >
- 📄 Ticket extension
Only for commuters >

Additional

- 📄 Fast Month Card >

Choose journey ☰

From Københavns Lufthavn St. (Metro)

To Holbæk St. ↕

Travelers 1 Adult ▾

Departure 20. Jun 2023 20:00 ▾ Now

1 h. 21 min. **from 33 kr.**

See travel info >

19:17 20:58

Elevatoren på Roskilde St. ved spor 6/7 er ude af ...

Elevatoren på Roskilde St. fra gangtunnelen til ...

1 h. 9 min. **from 43 kr.**

See travel info >

20:04 21:13

Elevatoren på Roskilde St. ved spor 6/7 er ude af ...

Elevatoren på Roskilde St. fra gangtunnelen til ...

1 h. 8 min. **from 33 kr.**

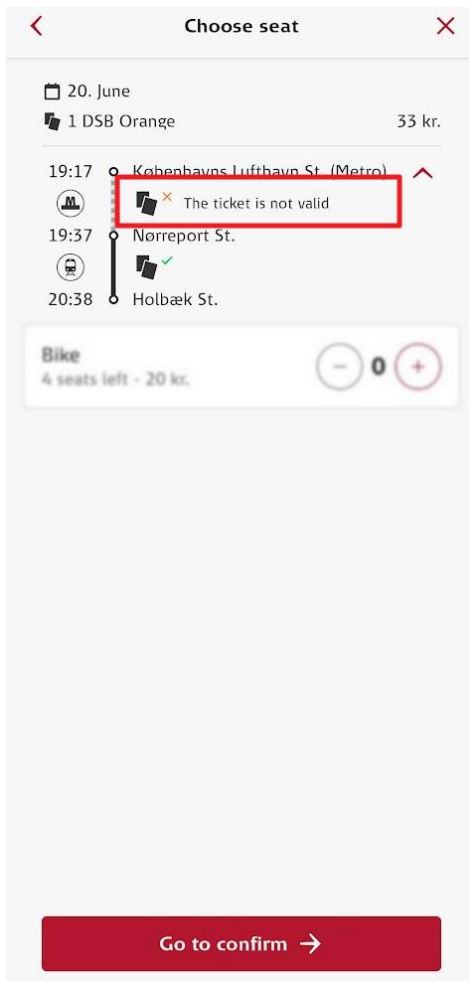
See travel info >

20:05 21:13

Elevatoren på Roskilde St. ved spor 6/7 er ude af ...

Elevatoren på Roskilde St. fra gangtunnelen til ...

Overview
Buy
Profile



However, it is not mandatory for customers to touch "See travel info" - you can also simply select the desired ticket and thus you will go directly to the **fourth** screenshot where you have to select the specific ticket type.

After selecting "Orange" ticket and pressing "Go to seat selection", you are presented with the **fifth** screenshot, which points out that the selected ticket type is not valid for the entire journey.

If you are satisfied with your choice of ticket, you proceed by pressing "Go to confirm", which leads to the **last** screenshot before payment.

On this **last** screenshot in the order flow, it is stated that the selected ticket is not valid between Københavns Lufthavn St. with Metro to Nørreport St. and specifically that this ticket is NOT valid on buses, metro local trains, private trains and Letbane, but only on the one journey stated on the ticket and only between DSB, Arriva and NJ stations.

You must actively accept these terms and conditions in order to proceed to the actual purchase of the ticket.

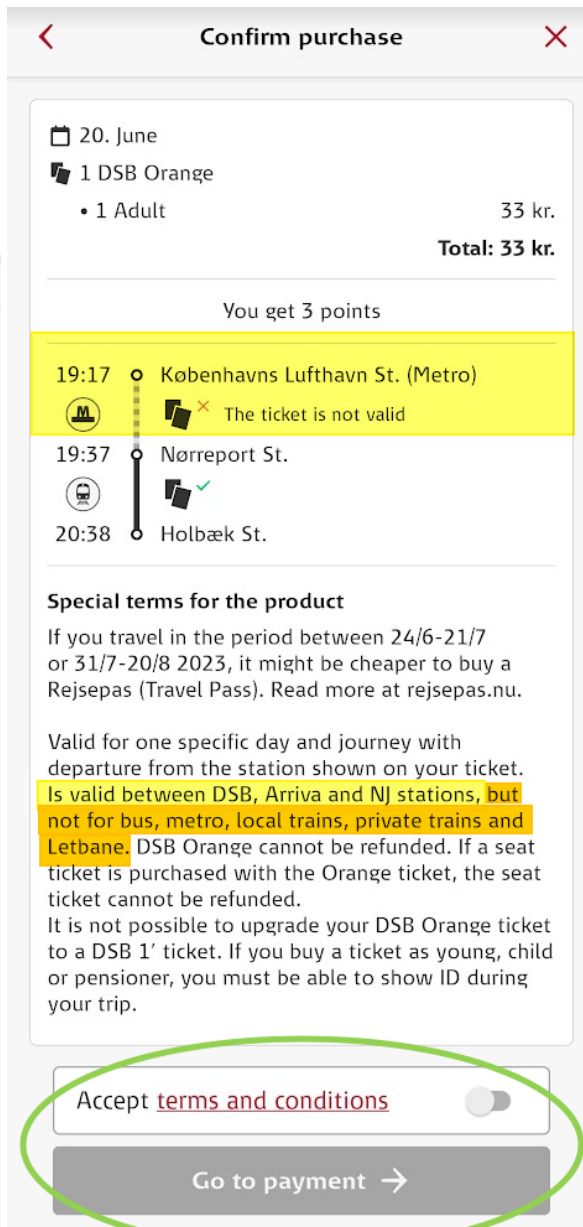
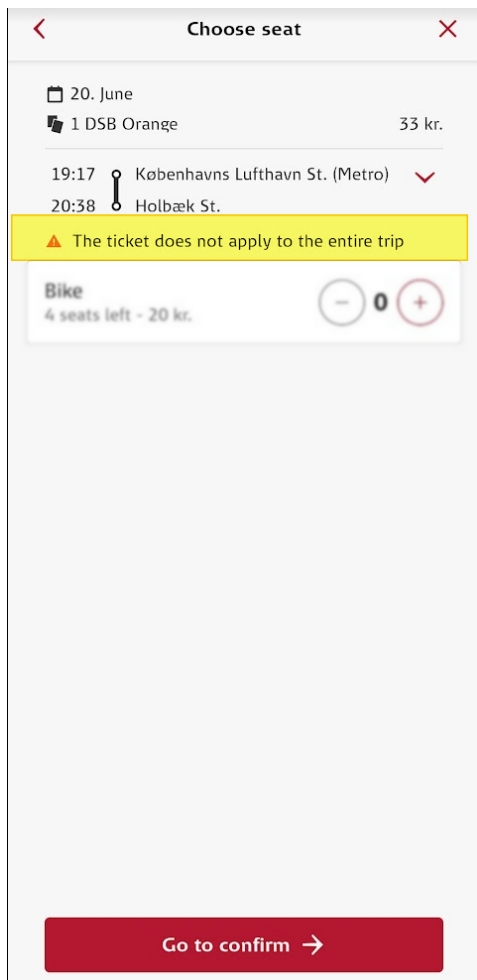
< Choose ticket >

20. June
1 Adult

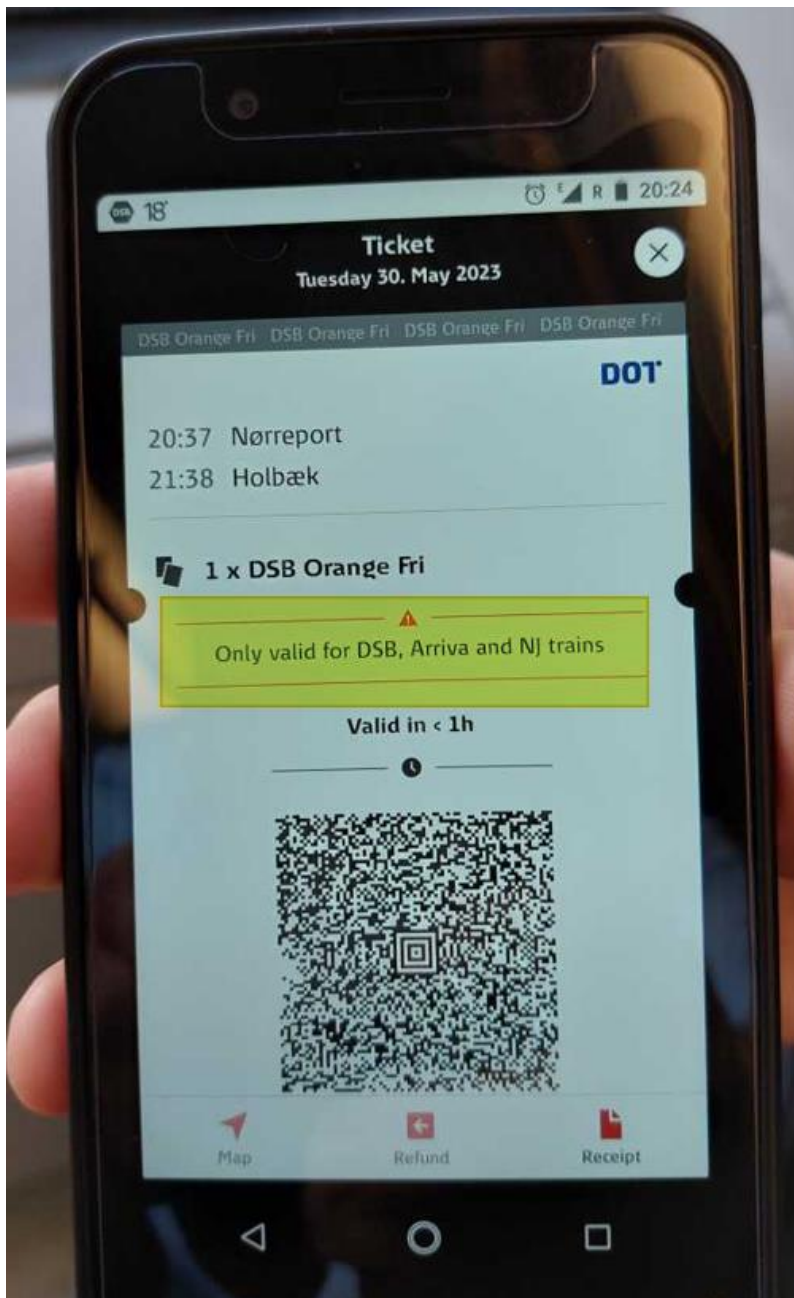
19:17 Københavns Lufthavn St. (Metro) ✓
20:38 Holbæk St.

- Orange 33 kr.
Fixed departure. Non refundable.
- Orange Fri 46 kr.
Fixed departure. Refundable until 30 min before departure.
- Standard ticket 104 kr.
Flexible departure. Refundable until the day before departure.
- DSB 1' RE ticket 144 kr.
Access to DSB 1' (Re) in regional trains. Free coffee, tea or mineral water in 7-Eleven at the station.
- Only seat reservation 20 kr.
For you, your bike and/or baby carriage.

Go to seat selection →



In addition to being made aware of the limitations of the Orange ticket in the order flow, it is also stated on the ticket itself that it is only valid on DSB, Arriva and NJ trains. The photo below was taken by the steward showing the complainant's cell phone in the control situation.



In his application to the Board of Appeal, the complainant writes that he is aware that he made a mistake but that he does not believe that the special restrictions appear clearly in the order flow.

Furthermore, the complainant informs that he has no reason to cheat because his employer covers his travel costs and that, a week earlier, he was also in Copenhagen where he bought a ticket from the Airport to Kongens Nytorv and was not offered an Orange ticket.

In conclusion, the complainant asks that consideration be given to the fact that he is not Danish, does not live in Denmark and therefore does not know the details as a Danish citizen.

However, we believe that the information about the limited use of Orange tickets is very precise all the way through the order flow and subsequently as text on the ticket itself.

We are also of the opinion that if you travel to and in a foreign country, you must pay extra attention when you are faced with something unknown.

In cases where a complainant claims that he/she does not know about Denmark and Danish rules because they live in another country, we always investigate the claim.

In the specific case, the CPR register states that the complainant was resident in Denmark in the period January 2006 to May 2007.

With reference to the above, we believe that the inspection fee has been imposed correctly.

Since we also believe that the conditions for using Orange tickets are clearly stated in the order flow, we also consider the subsequent case processing and decision to be correct. And as it is Metro's policy to treat passengers equally and since this case does not involve special circumstances, it is not possible to meet the complainant's request for a goodwill cancellation and we therefore maintain our demand for payment of inspection fee no. 01090[xxx] for DKK 750."

Hertil har klageren svaret:

"I insist, however, repeating the arguments of my second message, that this was not caused by bad intentions or the like, but by the ABOLUTELY NOT ERROR PROOF software of the DSB app. What sense does it make to offer a ticket that DOES NOT cover the full trip but instead highlights IN THE NEXT STEP ONLY (and not very conspicuously), AFTER selection, that it does not cover the full trip? If you are in a hurry, and do not have in the background knowledge that DSB and Metro are different companies so that it might be that such a constellation could occur at all. Coming from Germany I know the differences of different ticket types etc. down here, and they are complicated, but a) did assume that it is different in Denmark, b) that the software designers were as good as here in avoiding such obvious traps. That's what they achieved here with the DB-navigator, the German analogon to the DSB-app. You do not get offers in the DB navigator that do not cover the trip you looked for. Very easy and highly sensible. And the long reconstruction by Metro confirms that this gap exists. And there is even no reason for me to try to cheat since my employer covers the costs anyway (but of course not this "inspection fee").

If this is not reason enough to withdraw the decision out of sheer goodwill, I don't know why this procedure exists at all. But let's see..."

På ankenævnets vegne



Lone Bach Nielsen
Nævnensformand