

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2018-0026
- Klageren:** XX på egne vegne og på vegne af YY
England
- Indklagede:** Metro Service I/S v/Metro Service A/S
CVRnummer: 21 26 38 34
- Klagen vedrører:** En kontrolafgift på 750 kr. og et ekspeditionsgebyr på 125 kr. (nedskrevet kontrolafgift på 750 kr.) grundet udløbne billetter.
- Parternes krav:** Klageren ønsker kontrolafgiften annulleret
Indklagede fastholder denne
- Ankenævnets sammensætning:** Nævnnsformand, landsdommer Tine Vuust
Rasmus Markussen
Torben Steenberg
Bjarne Lindberg Bak
Helle Berg Johansen

Ankenævnet for Bus, Tog og Metro har på sit møde den 18. juni 2018 truffet følgende

AFGØRELSE:

Metro Service I/S v/Metro Service A/S er berettiget til at opretholde kravet om betaling af kontrolafgiften samt ekspeditionsgebyret, i alt 875 kr.

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

Da klageren ikke har fået medhold i klagen, tilbagebetales klagegebyret ikke.

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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 på www.domstol.dk, www.advokatsamfundet.dk og /eller eget forsikringssselskab om eventuel forsikringsretshjælp.

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SAGENS OMSTÆNDIGHEDER:

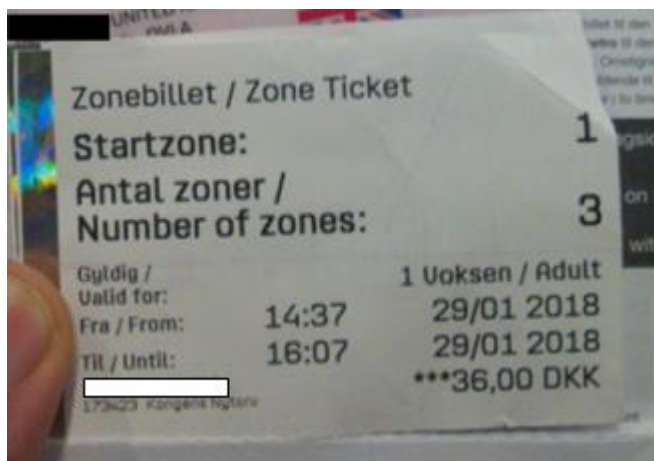
Klageren og hans forlovede, som begge er bosiddende i England, var på ferie i København, hvor de rejste med metroen. Den 29. januar 2018 havde de om eftermiddagen på Kongens Nytorv købt to billetter til hver 3 zoner fra zone 01. Senere samme dag rejste de igen med metroen, men havde ved en fejl ikke opdaget, at billetterne kun var gyldige til kl. 16:07.

På strækningen mellem Kastrup st. og Lufthavnen st. var der kontrol af deres rejsehjemmel, og da billetterne var udløbet, blev de henholdsvis kl. 17:42 og kl. 17:45 pålagt en kontrolafgift på hver 750 kr.

Klageren anmodede den 29. januar 2018 Metro Service om at annullere kontrolafgifterne og anførte til støtte herfor som ovenfor, samt at han havde dårligt helbred, og at der ikke er tidsbegrænsning på billetterne i England.

Metro Service fastholdt den 30. januar 2018 den ene af kontrolafgifterne med henvisning til selvbetjeningsprincippet, samt at billetterne var udløbet, at information om billetter findes på engelsk på alle stationer, at man har mulighed for at ændre sprog på billetautomaterne, at man ved køb af billetter i billetautomat informeres om, at man skal være opmærksom på, at billetten er tidsbegrænset, samt at god tro er uden betydning for kontrolafgiften. Den anden kontrolafgift blev undtagelsesvist nedsat til et ekspeditionsgebyr på 125 kr.

Metro Service har vedhæftet billeder af billetterne, hvoraf det fremgår at de er gyldige fra 14.37 til 16.07.





ANKENÆVNETS BEGRUNDELSE:

Klageren og dennes forlovede foreviste ved kontrollen i metroen den 29. januar 2018 omkring kl. 17:42 og kl. 17:45 billetter, som udløb kl. 16:07. Da billetterne således var udløbet inden deres ombordstigning, blev kontrolafgifterne dermed pålagt med rette.

Pligten til at betale kontrolafgift er ikke betinget af, om passageren bevidst har forsøgt at unddrage sig betaling for rejsen, og da rejse på dette er et område med oplagt mulighed for omgåelse af reglerne om at kunne forevise gyldig rejsehjemmel, er det ankenævnets opfattelse, at der ikke har foreligget sådanne særlig omstændigheder, at klageren og den medrejsende skal fritages for kontrolafgiften/ekspeditionsgebyret.

Ankenævnet bemærker, at Metro Service ikke havde pligt til at nedsætte den ene kontrolafgift til et ekspeditionsgebyr, da begge kontrolafgifter var berettigede. Herefter er Metro Service berettiget til at fastholde kravet om den fulde kontrolafgift til klageren og den pr. kulance nedskrevne kontrolafgift/ekspeditionsgebyr til klagerens forlovede, i alt 875 kr.

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, fremgår jernbanevirksomhedernes adgang til at opkræve kontrolafgift og ekspeditionsgebyr for passagerer, der ikke foreviser gyldig rejsehjemmel (billetter og kort). Jf. § 14 stk. 4, fastsætter transportministeren nærmere regler om jernbanevirksomhedens adgang til at opkræve kontrolafgift og ekspeditionsgebyr, jf. stk. 1.

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 pr. 1. november 2017, fremgår 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. 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 mobi-

le 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.

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.

Selskaberne kan erstatte kontrolafgiften med et ekspeditionsgebyr på 125 DKK mod samtidig betaling af den ordinære billetpris, hvis særlige forhold gør sig gældende.

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører følgende:

"I am emailing to appeal against the very recent fine that my fiancé and I incurred whilst using the Metro service in Denmark. I sent the following email initially to protest the charges due to the current hardship and troubling circumstances my fiancé and I have incurred this past year:

'Good evening,

My fiancé and I have recently travelled to Denmark as we have always wanted to visit copenhagen. It was supposed to be a stress free break away from the UK as we have been through quite a lot due to my very recent ill-health. Whilst we have been in Denmark we have had a wonderful time and experienced the best holiday we have had in years. Unfortunately, my fiancé and I were not aware that there were time constraints on the ticket and that we were only able to use it between 14:37 to 16:07. In the UK the train system is different and you can use tickets without such time constraints (unless you are travelling on or off peak of course) but I digress.. our holiday has ended on a low as my fiancé was very shaken up by the whole ordeal. Yes we were very naive to think the train system was similar to that of the uk and it is safe to say we have definitely learned our lesson. The only problem is my fiancé and I do not have a lot of money at the moment as I have been on sick pay and times are very difficult for the both of us at the moment. All we ask is that you please spare us this very expensive fine and in return we will never make this mistake when we visit Denmark again. After all, it was a very honest mistake and I sincerely hope you can accept our offer. We will await your response meanwhile.'

We received a very prompt response in which we are very grateful for. However, whilst I understand Metro must treat all their customers fairly - I wish to take this further to appeal the decision. The final decision was to reduce one of the fares to 125kr and leave the other at 750kr. As I have mentioned in the previous complaint email - we are currently struggling with our money situation at the moment due to my recent ill health. The simple fact of the matter is that my fiancé and I never intentionally tried to evade a fare and did pay for a ticket each. It was truly embarrassing to be treated like criminals in public and to end what was supposed to be a relaxing break on a phenomenally overpowering low.

We truly overlooked the fact that our tickets had time constraints attached. We have learned our very harsh lesson and I ask you to please take the above into consideration and to please help us (if not eradicate the fare) at least lower the other one to a 125kr administration fee. I have forwarded the previous email so we can provide you with as much extra information as you may need. I can sincerely promise you that this was a one off error on our behalf and it will definitely not happen again."

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 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 ticket. They do not distinguish between an intentional or unintentional mistake. They only check the validity of the ticket. 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 fiancé was met by a steward inspecting tickets on the 29th of January 2018 at 17:42 between Kastrup station and Lufthavnen station. The couple presented expired tickets. As the couple was not able to present valid tickets, a fare evasion ticket was issued to each of them, according to the travel regulations.

When you buy a ticket in one of our vending machines, you will be presented with a red text on the screen throughout the purchase flow, which clearly states that any ticket has a fixed-term validity that will take effect at the time of purchase and that the validity period will also be printed on the ticket you may buy. See the photos below:




Ticket to city centre	Adult (16+)
Tickets	Child
Day tickets	Dog
Supplementary ticket	Bicycle
Choose destination Denmark & Scania	Senior (65+)

Please note: All tickets issued have time-limited validity starting at the time of purchase. The validity period is printed on the ticket.

Choose destination Denmark & Scania	Senior (65+)
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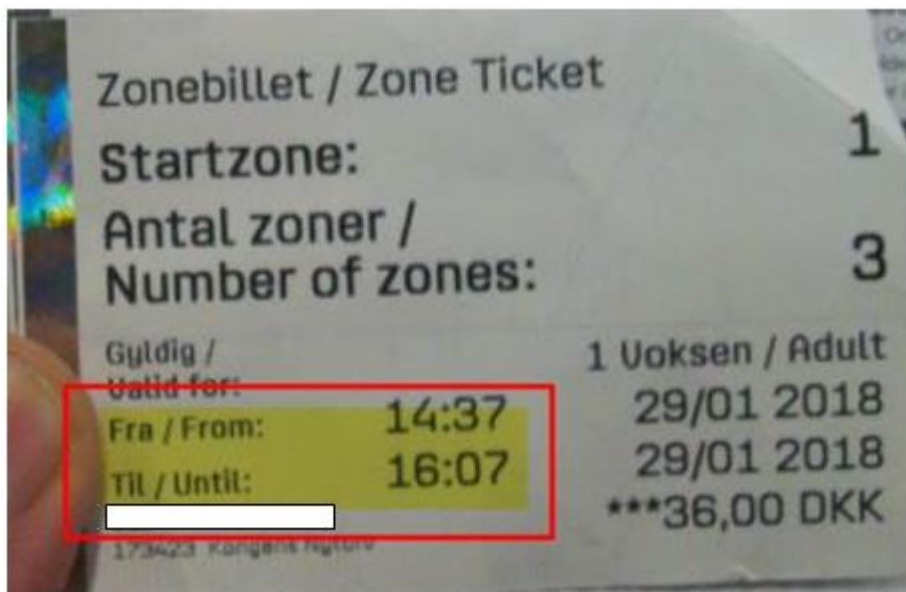
BACK STOP HELP

This ticket is a 3-zone ticket
The ticket is valid for travel to Copenhagen City Centre (zone 1).

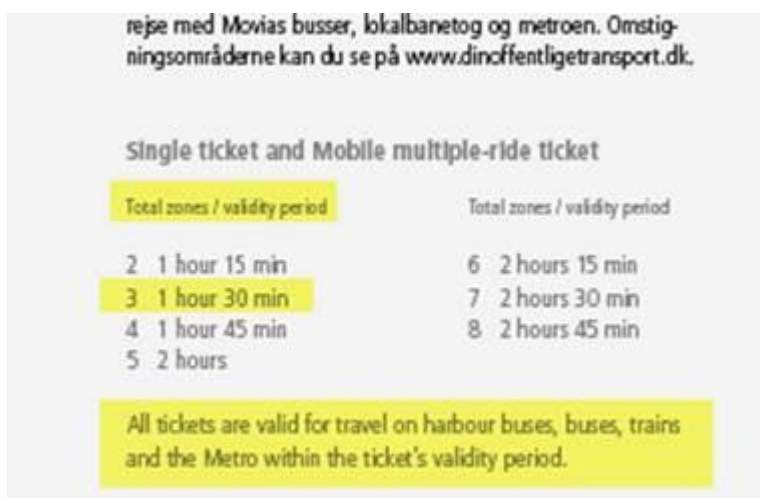
Please note: All tickets issued have time-limited validity starting at the time of purchase. The validity period is printed on the ticket.

BACK STOP HELP



In addition to the red text on the screen and print on the ticket itself, we have also set up large information boards at all our stations, where we provide information about the validity of tickets. The following photo is from the Kongens Nytorv station info board, and is also attached as PDF file:



Since the couple's tickets had expired about one and a half hours before they were checked, there is no doubt that both fare evasion tickets are imposed correctly and that we are in our good right to maintain both for the full amount.

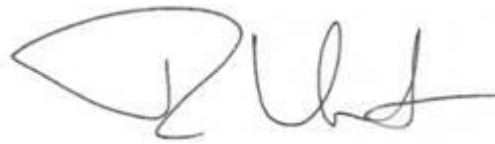
At Metro we are obliged to treat all passengers alike and the requirement of a valid ticket applies to all. In this particular case, however, we have decided, extraordinarily, to reduce one fare evasion ticket ([...]) to an administration fee of DKK 125,- but maintains the full amount of the other fare evasion ticket ([...]) DKK 750

In his mail to the Board of Appeals, the complainant strongly explains that he and his fiancé have been through quite a lot through the past year and are in a very difficult financial situation and that it has been necessary to have a family member pay the fee to the Board of Appeals, and that he therefore wishes/hopes to have his fare evasion ticket reduced, too.

We cannot fully recognize the complainant's statement that they are in a particularly difficult economic situation as it has come to our attention that the couple apparently traveled to Amsterdam in April 2017, was in Prague in early February 2018 and apparently plans a trip to USA this July.

However, regardless of whether or not our information is correct, we believe that we have already provided extraordinary good service by writing down one of the two fare evasion tickets and we do not see ourselves able to accommodate the desire for further reduction of the total claim amounting to DKK 875, -"

På ankenævnets vegne



Tine Vuust
Nævnshoved