

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

Journalnummer: 2018-0133

Klageren: XX
Belgien

Indklagede: Metroselskabet I/S v/Metro Service A/S
CVRnummer: 21 26 38 34

Klagen vedrører: Kontrolafgift på 750 kr. grundet manglende billet og stewardens adfærd

Parternes krav: Klageren ønsker kontrolafgiften annulleret
Indklagede fastholder denne

Ankenævnets sammensætning: Nævnshoved, landsdommer Tine Vuust
Rasmus Markussen
Torben Steenberg
Bjarne Lindberg Bak
Helle Berg Johansen

Ankenævnet for Bus, Tog og Metro har på sit møde den 31. oktober 2018 truffet følgende

AFGØRELSE:

Metroselskabet I/S v/Metro Service A/S er berettiget til at opretholde kravet om betaling af kontrolafgiften på 750 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.

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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 dennes kollega, som er fra henholdsvis Belgien og Letland, men midlertidigt bosiddende i Danmark, skulle den 27. maj 2018 rejse med metroen, men ifølge klageren kom de ved en fejl til at købe 1 billet til 2 zoner i stedet for 2 billetter til 1 zone.

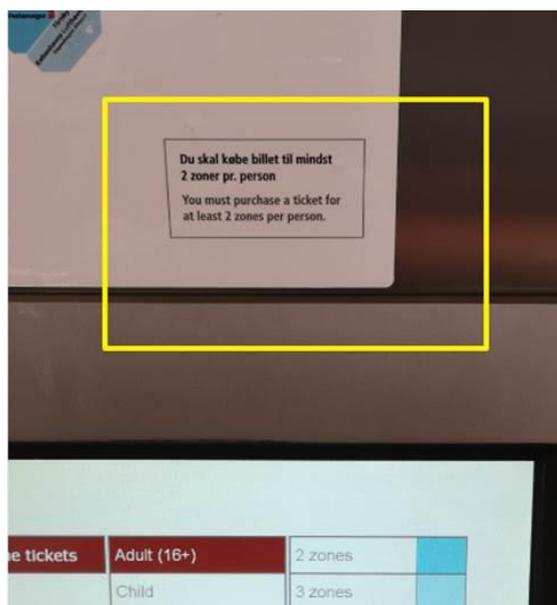
På strækningen mellem Kongens Nytorv st. og Nørreport st. var der kontrol af deres rejsehjemmel, og da billetten kun var gyldig rejsehjemmel til 1 voksen, blev klageren kl. 20:39 pålagt en kontrolafgift på 750 kr.

Klageren anmodede den 6. juni 2018 Metro Service om at annullere kontrolafgiften og anførte til støtte herfor som ovenfor, samt at de var i god tro, at de altid købte billetter og ikke havde i sinde at snyde, at de havde betalt for to zoner, at de havde tilbudt at købe en billet mere, at det var første gang de benyttede en billetautomat til at købe billetter, at de ikke forstod sproget, at de havde travlt, da de købte billetterne, og at bødens størrelse ikke var retfærdig, da det var en mindre forseelse, og at de ikke havde mange penge.

Metro Service fastholdt den 7. juni 2018 kontrolafgiften med henvisning til selvbetjeningsprincippet, samt at klageren ikke kunne forevise gyldig billet, da de kun havde 1 billet til 2 zoner, at det er passagerens eget ansvar at have gyldig rejsehjemmel, at de ikke kunne medtage klagerens gode tro i vurderingen, og at der er zonekort på alle stationer.

Klageren har over for ankenævnet tilføjet, at stewarden var kold og fik hende til at græde, samt at Metro Service burde tage hensyn til de særlige omstændigheder i deres tilfælde.

Information fra informationstavlerne og billetautomaten, hvor det står anført, at man altid skal købe mindst 2 zoner pr. person:



Sådan køber du en billet

How to buy a ticket

1. Den røde zone på kortet viser, hvor du befinder dig.
2. Find den zone, du vil rejse til, og aflæs farven for din tur. Hvis du rejser igennem en zone, der er dyrere end din destinationszone, skal du betale for den dyreste zonerfarve.
3. Køb billet, der svarer til det antal zoner, som farvekoden viser.
Du skal købe billet til mindst 2 zoner pr. person.

Du kan også indtaste en station og købe billet direkte til din destination.

1. The red zone on the map indicates your current location.
 2. Find the zone in which your destination is located to determine the zone colour code for your trip. If you travel through a zone that is more expensive than your destination zone, you must pay for the most expensive zone colour.
 3. Buy a ticket corresponding to the number of zones indicated by the colour code.
You must buy a ticket for at least 2 zones per person.
- You can also enter a station and buy a ticket directly to your destination.

ANKENÆVNETS BEGRUNDELSE:

Klageren og dennes medrejsende kunne ved kontrollen den 27. maj 2018 kun forevise gyldig rejsehjemmel til 1 voksen, og kontrolafgiften blev dermed pålagt med rette.

Det er ifølge selvbetjeningsprincippet passagerens eget ansvar at have gyldig rejsehjemmel og at kunne fremvise denne på forlangende.

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 mulighed for omgåelse af reglerne om at betale for sin rejse, er det ankenævnets opfattelse, at der ikke har foreligget sådanne særlig omstændigheder, at klageren skal fritages for kontrolafgiften.

Ankenævnet bemærker, at hvis klageren og dennes medpassager havde købt to billetter på hver en zone, var de begge blevet pålagt en kontrolafgift, da man minimum skal købe to zoner pr. person for at have gyldig rejsehjemmel. Informationen herom fremgår tilstrækkeligt tydeligt på engelsk på både billetautomaten og informationstavlerne på stationerne.

Ankenævnet har ikke fundet grundlag for at udtale kritik af den måde, hvorpå kontrollen foregik.

Kontrolafgiften er et fast beløb og differentieres ikke efter passagerens indkomst.

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 mobile enhed før påstigning.

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:

"Me and my Latvian colleague (in Copenhagen for a European training organized by AFS Denmark) got a fine on the metro because we had made a mistake when we entered the information in the ticket machine. Instead of 2 adults for 1 zone, we entered 1 adult for 2 zones. When an inspector of the Metro came by and asked for our tickets, we gave our ticket and we were completely surprised that we had to get off the metro to be fined.

When the lady explained what went wrong we understood of course and we apologized for making this mistake and offered to buy an extra ticket.

We also could show that we only needed 1 zone for his ride and accidentally had bought 2 zones but unfortunately only for one person.

To prove that this was an accident we also showed her all the other tickets we had with us (bought on the bus or water taxi) that showed that we had always bought two tickets when we took public transport and that we never had cheated. (We aren't even that honest that we run after the man of the water taxi when he forgot to sell us a ticket while we could have travelled easily for free. But that is not us!)

Anyway we are honest people, we are not cheating and we can afford a bus ticket ... It must have been clear for the inspector of the bus company that we were really surprised when she told us that we had a wrong ticket and we did admit our mistake and offered to buy another ticket.

But she didn't want to speak about it, she said that it was her task to fine us and that if we had a story to tell we had to direct to the customer service because it was not her job to listen to clients (honestly, at that moment this message was brought in a way that was so cool that it made me cry).

But anyway, maybe this attitude is understandable in one sense (although there is nothing wrong with being client friendly even in such situation), although I think you could take circumstances in consideration.

But policy is policy and if the inspector on the metro has not the right to judge these kind of situations, so be it.

My personal opinion is -I hope you don't feel insulted by his personal opinion because that is definitely not what I want – that a fine of 750 Danish Kroner is a little bit exaggerated in the light of this case (we paid 1 ticket of 2 zones instead of 2 tickets of 1 zone) and that everything I explained could be circumstances in which you adapt the existing rules in a reasonable way.

I don't see why that wouldn't be possible. I think it is good to have clear rules and then apply them in a way

that takes circumstances into account. We are no criminals, we are not trying to abuse the system, we do respect the fact that public transport comes with a cost, we even both a ticket for 2 zones instead of 1!

I know it is not up to me to debate your rules and I absolutely respect those rules but rules should be in service of people and there is nothing wrong with some empathy and understanding isn't it?

And if the inspector on the spot has not the right to take circumstances into account, I had hoped for some understanding of your Customer Service.

Because I think it is their job to listen to customers and to strive for happy clients that have the feeling that they were well treated.

I know that this is a long story and the reason that I pay this 160 Kroner to file this complaint is that I really feel bad about this and also at the spot I couldn't help start crying because I had the feeling that I was not listened to and that I was treated as a first class criminal. I really missed any reason in this (again, without willing to debate your rules and system, that is not up to me!)

But I really felt like scum and as if I was not human enough to be listened to.

And Denmark is known as a hospitable country isn't it? My Danish colleagues were also completely surprised and did excuse for what happened.

In summary: I do not understand why we should pay 750 Kroner for this little mistake. Because in my view it's not only about rules in life but also about the evaluation of a situation (sorry, for this personal opinion, but I host every year over 200 students from all around the world in Belgium and this made me only more convinced of this point of view: you need clear rules but then you apply them according to the people and the circumstances).

And the circumstances are not only what happened on the metro and what I explained before; it is also that 750 Kroner is 1/10 of my colleagues salary in Latvia!

So she is not going to pay this. If there is a fine to pay, I'll do it although she bought the tickets. But also for me (a Belgian working for a small non profit ngo) this is a lot of money and we are working for a non profit so I'm not going to ask my organisation to pay for it.

So I just hope for your understanding.

We are no criminals, we are not debating these rules, we respect your rules but at least I can try to ask for a fair assessment of the situation and for your hospitality. Because it is a lot of money and we were more than fair clients of DOT.

I honestly was a little bit shocked about the fact that there was 0 discussion possible.

From customer service I understand that these inspectors on the spot can not debate such things and are not allowed to take the circumstances into consideration, but then at least I had hoped for a fair assessment of the situation by the customer service.

And the fact that they just pointed out that all information is available in English is for me – I'm really sorry – not the reaction I had hoped for. Because first of all not everybody does speak English and secondly: this is not relevant because even in Dutch or Latvian we would have made the same mistake, we just unconsciously made a mistake. That happens.

So that's why I hope for your understanding. Because I like Denmark a lot, I met so many friendly people, I send every year several students to Denmark and I host every year many Danish youngsters but this was really a very negative experience.

Sorry for this long story and my complaints and thank you for reading this to start with. Sorry again but I hope you understand.

PS: I upload all the tickets we bought in Denmark so that you can see that except for this one time we always paid the correct tickets."

Indklagede anfører følgende:

Klager har kommenteret herpå med lilla skrift.

"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]www.m.dk and on Din Offentlige Transport - <https://www.rejsekort.dk/~media/rejsekort/pdf/flr/faelles-landsdaekkende-rejseregler.pdf> as well as on our information boards which are placed at every station. The information boards contain travel information in both English and Danish.

I do understand, this is clear. And as I stated before, it is in no sense my intention to criticize the rules of the Danish public transport. This rules are clear and honest.

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.

I do understand all of this information and I can see that the Danish public transport is really well organized with a lot of possibilities to get informed. Not any critique on that. Apparently and based on this information (sorry, I didn't pay any attention to this) it is clear that the Danish public transport provides enough opportunities to get assistance or guidance.

But I don't think all of this feedback is very relevant in this case because we were not looking for guidance or assistance. If things wouldn't have been clear to us, we would have found enough opportunities to be informed and it wouldn't have been any problem to get assistance.

But the fact was that we weren't looking for information because this mistake was 'unintentional'. And that's the key-word.

We were not aware of the fact that we made a mistake.

If so we would have done differently.

And I also think that in theory it is correct that you can find any information and assistance you need but the daily reality is that people (definitely in an action as 'taking public transport') are not acting reading every information that is available or not spending hours on being well informed. Definitely not if a system seems so be well organized as it is in Denmark.

My whole point is: I do respect your rules and the first line reaction of the metro staff (indeed, I was a bit chocked at first site but now that I read your reaction, I do understand very well that you can not expect from those people to give a judgement, they just need to do their job and are not recruited to have an opinion in those situations. I apologize if my first reaction towards them was a little strong)

But I do think that people that are active in 'customer service' their job is to also take circumstances into account (sorry, maybe this is a Belgian point of view, I just do believe that rules are there to serve people and not the other way around).

And then I do think that intention is a very important parameter. As well acknowledgement of mistakes, being polite, apologizing, the will to buy another ticket immediately, the proof that you had always payed your tickets, the fact that we were guests not used to the system, ...

And maybe this is only because this is my experience in Belgium but why would there be a 'board of appeal'?

Anyway, thank you for the information but we were just two guests in Kopenhagen thinking that we were doing the right thing and acknowledging our mistake.

In the case in question, the complainant and a friend was met by a steward inspecting tickets on the 27th of May 2018 at 20:39 in the train from Kongens Nytorv station towards Nørreport station. The two ladies showed one 2-zone ticket, which was just valid travel for one of them. Therefore, as the complainant did not have a valid ticket, a fare evasion ticket was issued to her according to current rules.

The complainant explains that the two ladies, accidentally, choose wrongly on the ticket machine; that although they had chosen and bought one adult ticket for 2 zones, it was their intention to choose/buy two adult tickets with 1 zone on each.

If the ladies had done what the complainant explains was the intention, they would both have had a fare evasion ticket and not just the complainant. This is because you always have to buy a ticket of at least 2 zones.

The information that you must always have a ticket of at least 2 zones each, is written on the ticket machine itself and on the information boards at all stations. See below as well as the attached pdf 'Info-vitrine'.

Again, in theory we could have read this but in reality not too many people read what is written on those machines. And we were not looking for information because we were not aware of the fact that we made a mistake.

But thank you for this new information: I did not know that the minimum of a fare evasion ticket is 2 zones. We only had to take the metro for two stops so we thought it could not be more than 1 zone.

I honestly did not know that 2 zones was the minimum (as I said, people don't tend to read what is written on machines except when they are consciously looking for information).

We also did not know that we needed 2 tickets because in the bus we got more than once only 1 ticket for 2 people.

Again, we were not aware of the fact that we were making a mistake, we didn't want to cheat and we had no bad intentions.

It was unintentional and maybe that is where we do disagree: you think that rules are rules (and that is it) and I think that in certain circumstances rules should be not discussed (and again: I do not want to argue your rules) but they should be kept against the light of the circumstances.

And maybe I'm more sensitive about this in this case because it is a lot of money (ofcourse your right to decide) and definitely for someone who earns a Latvian salary (as I said, I will pay it for her but still ... why can you not be reasonable and take circumstances into account? You have a customer service, you do want happy customers, what is wrong with being reasonable? Again, we are no criminals ...)

I'm sorry, maybe this is only an intercultural difference but please look into the circumstances ...

The complainant has attached copies of 8 tickets, allegedly to prove that she and her friend always buy a ticket. However, none of the attached tickets has been valid when the ladies were checked. We are of course pleased that the ladies have bought tickets for other trips they have made, but we do not think it is relevant to the case as you need a valid ticket every time you board the metro.

As the metro is based on a self-service system, you must have a valid ticket before boarding and if you cannot present a valid ticket a fare evasion ticket will be issued. Since a valid ticket must be purchased before boarding, it is not possible to get off the train to buy the ticket instead of receiving a fare evasion ticket.

I know, I know, but this is not the issue, the issue is that we thought we did it right, that the intention was correct (and I do think that it is exact the role of the board of appeal or the customer service or whatever you want to name it to take that into account.

A fare evasion ticket in Copenhagen is currently DKK 750 for persons from age 16. The amount is approved by the relevant authorities and is not graded in relation to income etc.

It is your right to decide that and I don't criticize your decision.

Our stewards have many tasks; One of them is, among other things, controlling tickets. However, a steward may not personally assess the reason for the missing/non valid ticket. The steward may only relate to whether or not a valid ticket can be presented in the control situation and, if that is not the case, issue a fare evasion ticket. Case processing is done exclusively by the Customer Service Department after written inquiry.

I do understand and I apologize if I was too hard on your steward. But I hope that the Customer Service has the mandate and the conduct to see further than only the rules (that I do not want to discuss).

We are sorry if the ladies found the control situation uncomfortable, but a fare evasion ticket issued on the correct basis will not be canceled.

I'm sorry if I was too hard in my previous reactions towards your stewards but honestly we did feel very uncomfortable. Anyway, not everybody is equally socially skilled but the reaction was very cool so I think it is understandable as well that we did feel very emotional. We were not even aware that we made a mistake. And we didn't feel any empathy.

We must emphasize that we do not relate to customers' intentions regarding the purchase of tickets and we do not consider anyone as cheaters or criminals. We only relate to whether a valid ticket can be presented or not.

I do understand and as I said, I'm sorry if I was too accusatory towards your steward.

The requirement for a valid ticket applies to everyone. There is no difference, everyone travels under the same conditions. There are thus no special rules for retirees, children, students, tourists, disabled people or any other interest groups - except for certain disability organizations that have previously entered into special agreements for some of their members.

That is where I do not agree. I do agree that rules should be clear and communicated in a unambiguously way, I do agree that it is up to you to decide on these rules but I do think that if it comes to concrete situations rules should be in service of people and not the other way around. The main goal is to have happy customers isn't it? Am I wrong?

And it is not even about 'happy customers' in my case. It is just about having the feeling that you are dealt with in a fair way. That you are listened to, that people understand that you had no bad intentions. If I see the effect of this on my colleague because she feels so guilty that I'm now going to pay € 100 for her unintentional mistake, I just don't think that this is a just way to treat your customers.

Sorry, this is not about rules (I leave that up to you) but about how people that use your public transport feel.

Any inquiries to the metro staff, whether via call points, in person or in writing, can be done in Danish and English, as well as the information boards and signs at the stations are written in Danish and English. We understand that it may be a little confusing to be in a foreign country. But precisely for this reason, we are of the opinion that you have to pay extra attention. Passengers should do an effort in familiarizing themselves with a transport system, when coming to a foreign country.

Again, I know that public transport in Kopenhagen I very well organized and that assistance, guidance and information is relevant but I do not think that it is relevant here because we made an unintentional mistake and we were not looking for extra information.

In this particular case, the presented ticket was valid only for one of the two ladies and therefore one of them had to accept a fare evasion ticket. Since it is the complainant who has completed and signed the receipt for the fare evasion ticket no. [...], she does not have to worry about whether we also send an invoice to her Latvian friend.

Thank you for that, but may I point out that in this case I'm the only one that is showing empathy and solidarity? And I'm happy that I'm human enough not to have my colleague paying this fine (taken the circumstances in account that she earn half of my salary) but I'm convinced that this is not only my responsibility but that you could also choose to show any empathy and solidarity based on the circumstances of this cases and our real intent.

I don't think this should be only me, I do think that this is also the mandate and responsibility of the customers service.

I could do the same as you by saying: she bought the ticket so she made the mistake so she has to pay the fine but that is ignoring the fact that what she did was unintentional. She was not doing this on purpose so I take the circumstances into account (and then I think that I should be the one to pay).

As it is beyond doubt that the complainant did not have a valid ticket in the control situation, the fare evasion ticket was imposed correctly and we therefore maintain our claim for payment of fare evasion ticket no. [...] of DKK 750, -

Maybe you might think now that I'm fighting against windmills. And I did read your advice not to push this because in the past the verdict was mostly for the public transport company in similar cases. But still, let's fight windmills even if this is just a cultural difference.

But if I remember how bad me felt at that moment and how guilty my colleague feels now that I'm going to pay this, I think I should continue.

Maybe that is naive, and I hope I do not offend you by pushing this because this is not my intention.

I can not say enough that I respect your rules and your authority but still, this does not feel good and I can only try. Because this doesn't provide you happy customers and we feel bad

I hope to count on the fact that you want to take our intent and the circumstances into account although that are things you never can put into rules or a regulation. But that is exactly why agencies as you exist for.

So with great respect for what you are doing I rest my case."

Indklagede anfører hertil:

"We have carefully read the complainant's recent remarks, but we are not of the opinion that any new information has been added to the case.

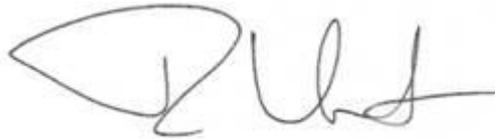
In our previous replies, we have already expressed that we do not address the reason for a missing ticket, but we would like again to emphasize that we do not consider people without a ticket to be neither cheats nor criminals.

We do not in any way relate to whether it is an intentional or unintentional act, but only relate to whether a valid ticket can be displayed or not.

We can understand that it feels unfair to have to pay a fare evasion ticket when you thought you did everything right, but we cannot take people's intentions into consideration.

Since the missing/invalid ticket is not due to any errors on metro machines and/or systems there are unfortunately no circumstances that could result in cancellation of the fare evasion ticket, why we maintain our claim for payment of the same.”

På ankenævnets vegne



Tine Vuust
Nævnnsformand