

## AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2018-0145
- Klageren:** XX på egne vegne og på vegne af sin ægtefælle YY  
England
- Indklagede:** Metroselskabet I/S v/Metro Service A/S  
**CVRnummer:** 21 26 38 34
- Klagen vedrører:** 2 kontrolafgifter på hver 750 kr. grundet manglende billet. Ægteparret kunne ikke finde en billetautomat men steg alligevel ombord på metroen, da de troede, at de kunne købe billet ombord.
- Parternes krav:** Klageren ønsker kontrolafgifterne annulleret  
Indklagede fastholder disse
- 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 12. december 2018 truffet følgende

### **AFGØRELSE:**

Metroselskabet I/S v/Metro Service A/S er berettiget til at opretholde kravet om betaling af kontrolafgifterne på i alt 1500 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.

- 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 på [www.domstol.dk](http://www.domstol.dk), [www.advokatsamfundet.dk](http://www.advokatsamfundet.dk) og /eller eget forsikringssselskab om eventuel forsikringsretshjælp.

-oOo-

### **SAGENS OMSTÆNDIGHEDER:**

Klageren og dennes ægtefælle, som er bosiddende i England og var på ferie i Danmark, skulle den 9. juni 2018 rejse med metroen fra Nørreport st. til Lufthavnen st. Ifølge klageren havde de ikke tidligere rejst med metroen, og da de efter vejledning fra en steward kom ned på perronen til metroen, var der ikke nogen billetautomater, hvorfor de regnede med at kunne købe billetter ombord.

På strækningen mellem Femøren st. og Lufthavnen st. var der kontrol af ægteparrets rejsehjemmel, og da de ikke kunne forevise nogen billet, blev de henholdsvis kl. 16:04 og kl. 16:06 pålagt en kontrolafgift på hver 750 kr.

Klageren anmodede den 10. juni 2018 Metro Service om at annullere kontrolafgifterne og anførte til støtte herfor som ovenfor, at der ikke var noget skilt på perronen om, at man ikke kunne købe billet i metroen, og at de troede, at de kunne købe billetter af kontrolløren, da de så ham, samt at begge kontrollører havde erkendt, at man ikke kunne købe billetter på perronen på Nørreport st.

Metro Service fastholdt den 12. juni 2018 kontrolafgiften med henvisning til selvbetjeningsprincippet, og at det ikke var muligt at medtage klagerens gode tro i vurderingen, samt at det på alle dørene på platformen står angivet både på dansk og engelsk, at man skal huske billet, inden man stiger om bord.

Metro Service har fremlagt billede af vejledningen fra dørene på perronplatformen.



## **ANKENÆVNETS BEGRUNDELSE:**

Ægteparret kunne ved kontrollen den 9. juni 2018 ikke forevise nogen rejsehjemmel, og kontrolafgifterne blev dermed pålagt med rette.

Det er passagerers eget ansvar at sikre sig gyldig rejsehjemmel inden ombordstigning på metroen, hvilket også er skiltet på engelsk ved perrondørene og på tavlen på selve perronen. Selv efter at klagerne konstaterede, at der ikke var billetautomater i selve metroen, forblev de om bord yderligere 6 stop uden billet.

Der findes en del billetautomater på gadeniveau på Nørreport st. og på etagen over metroperronen.

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 kunne forevise gyldig rejsehjemmel, er det ankenævnets opfattelse, at der ikke har foreligget sådanne særlig omstændigheder, at klageren skal fritages for kontrolafgiften.

Ankenævnet bemærker dog, at Metro Service bør overveje, om det kan skiltes tydeligt, at billetautomaten befinder sig på en platform over perronniveau.

## **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. marts 2018, 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. 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.

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

### **Klageren anfører følgende:**

"We had never come across any metro without ticket barriers or indeed ticket machines before you come down to a platform. This is the main reason why we were confused! Perhaps Copenhagen City should think about installing some ticket barriers so that people like us are not caught out or improve the signs to ticket machines! Alternatively, as there are clearly not enough ticket machines, one should have the opportunity to buy tickets on the train - even with a surcharge as some places do - but not with a hefty fine for people like us who have no intention of cheating! Of course we will still happily pay the fares we are due - there is no question about that - we are just appealing against the fine as we are no cheats - we could have just left the train as the train had just stopped at a station when the conductor came! Would cheats stay on a standing train with doors open and ask the conductor for a ticket? No, of course not!

In Summary:

- 1) We had never used the Copenhagen metro and were very confused to come to a platform with trains. Every metro we have used has ticket halls with machines and ticket barriers. This makes it possible to buy tickets!
- 2) We went a somewhat unusual route to the platform and did not come across any ticket machines (As confirmed by 2 of your employees!), signs to ticket machines or any signs saying that we could not pay on the train. Therefore we could not buy a ticket.
- 3) We did not see any signs that you could not buy tickets on the train which apparently are on the screen doors (WE WERE TOLD WHERE THE SIGNS ARE TO BE FOUND WHEN OUR FIRST APPEAL WAS REJECTED- WE DID NOT SEE THEM) as we entered the train when the screen doors were open and we just got in before the train left.
- 4) The train was at a station with doors open when the conductor came to us (Of course we had seen him approach us!) when we asked him to purchase tickets from Norreport to the airport. Clearly cheats would just have left the train then! The conductor therefore knew that we are not cheats, was very sorry and encouraged us to appeal.
- 5) Of course we are happy to pay the fare we still owe!

In the light of this we plea with you to scrap the fine and just let us know how much we owe for the fare. I had tried to fill in the appeal form in Danish before I was told where to find the English form and where to pay the appeal fee. This has been converted from Euros. I hope you can help us to put this distressing episode behind us as this spoilt a nice visit – thank you."

### **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.

This basic rule is a premise for the self-service system used in the Metro. This information available on [www.m.dk](http://www.m.dk) and on Din Offentlige Transport - <https://www.rejsekort.dk/~media/rejsekort/pdf/flr/faelles-landsdaekkende-rejseregler.pdf> as well as on the Information walls on all stations. The Information walls are all in both Danish and English language.

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.

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. Our

stewards have many tasks; One of them is, among other things, controlling tickets. However, a steward may not handle any sort of case-by-case procedure, but may only decide whether a valid ticket can be presented in the ticket situation and, if not, issue a fare evasion ticket. Case processing is done exclusively by the Customer Service Department after written inquiry.

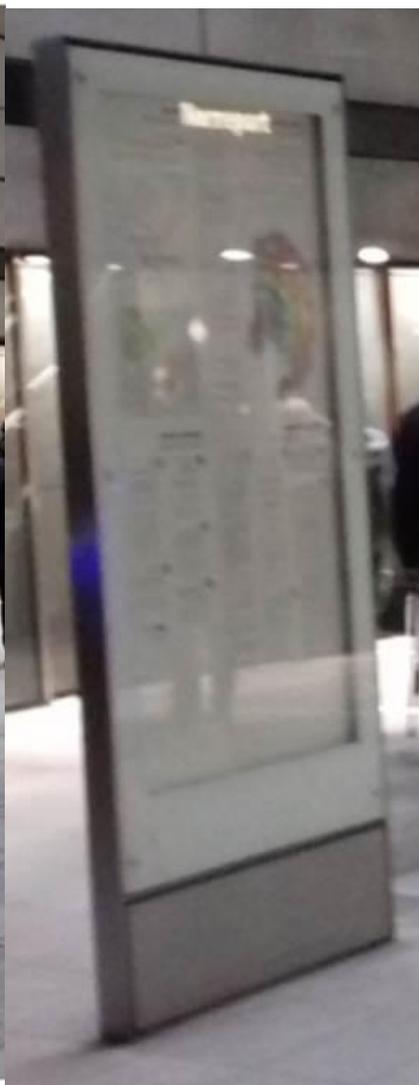
In the case in question, the complainants; a married British couple, was met by two stewards inspecting tickets on the 9<sup>th</sup> of June 2018 at app. 16:05 betw. Femøren station and Airport station. The couple did not have any tickets. As the couple was not able to present valid tickets, a fare evasion ticket was issued to each of them, according to the travel regulations.

The complainants started their journey at Nørreport station. They state that they could not find any ticket vending machines at the station and that they did not see any signs informing that you must have a ticket before entering the metro.

The complainants also state that they asked 2 metro persons about how to get to the airport.

Nørreport station is the busiest of all Copenhagen stations, with both metro, s-train and rail. For the same reason, there are numerous ticket machines at street level as well as at the concourse level. In addition to ticket machines, you can also buy tickets in the large 7/Eleven store.

At all our stations there are large information boards in which you can read in Danish and English that you have to buy the ticket before boarding and that you will receive a fare evasion ticket if you cannot show a valid ticket (see the photos below and the attached PDF fill).





### Kontrolafgift Penalty fares

Husk, at det er dit ansvar inden påstigning at have gyldig billet eller gyldigt kort til rejsen for både dig og dine eventuelle ledsagere.

Manglende billet eller kort samt rejse i spærretiden for dem, der rejser på pensionistkort eller med cykel, medfører en kontrolafgift, og videre rejse med cykel i spærretiden er ikke tilladt. Spærretid for cykler er alle hverdage kl. 7-9 og kl. 15:30-17:30 undtagen i juni, juli og august. For pensionistkort er spærretiden alle hverdage kl. 7-9.

Vi henviser til [www.dinoffentligetransport.dk](http://www.dinoffentligetransport.dk) samt rejse-reglerne for gældende satser på kontrolafgifter og yderligere information.

Remember that you are responsible for ensuring that you have a valid ticket or valid card for the trip before boarding, both for you and any accompanying travellers. A penalty fare will be charged for travelling without a valid ticket or card.

A penalty fare will also be charged for travel using a pensioner pass outside of the valid hours and for travelling with a bicycle outside of the permitted hours – please note that continued travel with a bicycle during these hours will not be permitted. Travel with bicycles is not permitted on weekdays between the hours of 7:00 am - 9:00am and 3:30pm - 5:30pm, except in the months of June, July and August. Pensioner passes cannot be used for travel on weekdays between the hours of 7:00am - 9:00am.

Please refer to [www.dinoffentligetransport.dk](http://www.dinoffentligetransport.dk) and the travel rules for the applicable penalty fares and additional information.



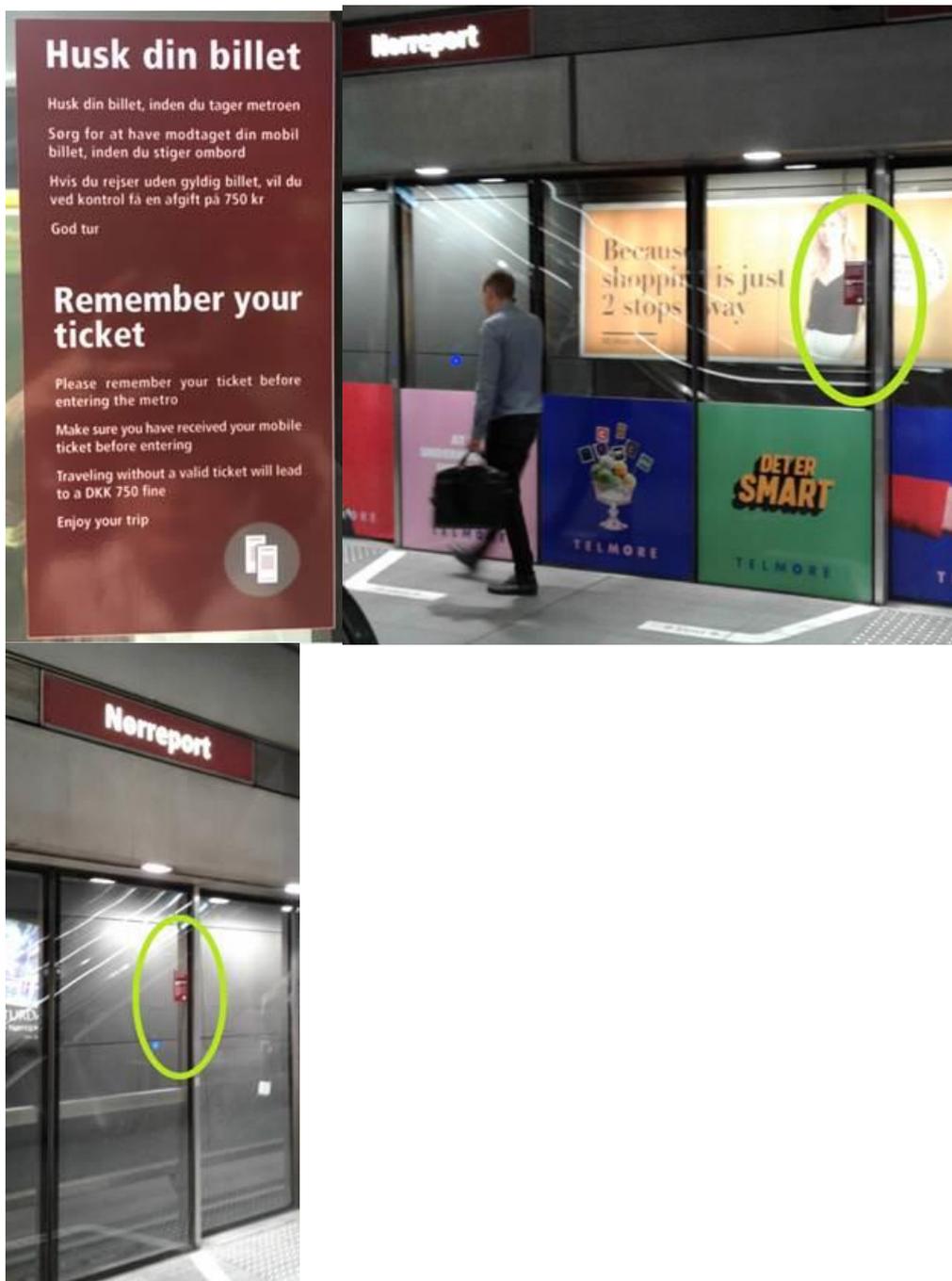
**Alle billetter gælder til både havnebus, bus, tog og metro.**

All tickets are valid for travel on harbour buses, buses, trains and the Metro.

**Husk at have en gyldig billet, inden du står på – du kan ikke købe billetter i metrotoget.**

Remember to have a valid ticket before boarding – you cannot buy tickets on a Metro train.

In addition to the large information boards, there are also signs at every platform screen door, that in Danish and English, inform you that you have to get a ticket before boarding and that you will receive a fare evasion ticket if you travel without a valid ticket. (see photos below).



In addition to the many possibilities to buy tickets in either a vending machine or at 7/Eleven, Nørreport station is also always staffed with metro personnel who gladly advise and guide in all questions concerning Metro. The complainants inform themselves that they had contact with 2 metro personnel asking how to find way, so we wonder why they did not return to one of these staff and asked where they could buy tickets.

In Denmark we do not use barriers at the stations, but you must still be in possession of a valid ticket before boarding the train.

Although we can well imagine that you can get confused, we do not think it may be an excuse for not buying tickets. Passengers should do an effort to familiarize themselves with a transport system when coming to a foreign country. Assuming that rules and the way of use from the home country also apply in Copenhagen, is in our opinion not sufficient.

We must emphasize that we never adhere to our customers' intentions regarding the purchase of tickets, and we certainly do not regard them as cheats, but exclusively to the facts. Facts in the present case are that the complainants did not try to locate the ticket vending machines and therefore could not present valid tickets at control, why a fare evasion ticket was issued to each of them in accordance with applicable rules.

At Metro, we treat everyone equally, the requirement for valid ticket goes for all. No distinction is made, all travels on the same terms. There is thus no special rules for pensioners, children, tourists, disabled or any other interest groups - apart from some disability organizations that previously has entered into special agreements for each of their members.

Considering the above, we maintain our claim on both fare evasion tickets (... ) of each 750 DKK a total of 1.500,- DKK."

### **Klageren anfører hertil:**

"We note the decision below.

However, the fact that 2 employees of the metro confirmed that there were no ticket machines the way we came as well as the fact that we could have easily left the train when the conductor came and the fact that the train doors were open when we hopped on the train and hence the notices were obscured (we only learned from our complaint where the notices were!) have completely been ignored.

1. They state that we asked 2 metro employees of how to get to the airport. This is not correct. We asked one METRO EMPLOYEE on a platform of how to get to the train to the airport as we were so confused and had no idea where we were and there were no signs of any description, Your employee pointed to a set of stairs going even further down and said that we should cross a corridor leading to another platform for trains to the airport. When we arrived there, there was a train to the airport -as we saw on the platform display sign - with the doors open ready to leave within the minute. So we just hopped on.

Then, 2 METRO EMPLOYEES, the conductor on the train checking the tickets and another at the airport. CONFIRMED after we described the way of how we got on the train, that there were NO TICKET MACHINES ON THE WAY WE CAME.

These 2 METRO EMPLOYEES also ENCOURAGED to us that we should appeal as our case was so unusual! However, so far the statement of the Metro employees has been ignored completely and we ask you to take this into account,

2. We also DID NOT SEE any signs "do not enter without ticket". Again, this is probably due to an unfortunate set of circumstances caused by the way we arrived at the platform and the fact that we focussed only on the train for the airport which stood at the platform when we arrived with doors open and ready to leave any second, We only learned from the reply from the Metro that there are signs at the door saying do not enter without tickets. As the doors were open, we did not see those.

3. The fact that we could have left the train at a station when the conductor came has also completely been ignored! The train stood there with the door open and we could just have hopped out. We are NO FARE CHEATS. None of us has ever been charged with a fine as we are no cheats and pay what we owe. We have been travelling in various countries and for example, we were told in Germany once (and did that as well) as we would have missed the train if we had tried to get a ticket from a machine or in person, that we should board the train and immediately approach the conductor and explain why we did not have a ticket. We did that and were just charged the fare!

Hence in Denmark, as THERE WERE NO TICKET MACHINES on our way or indeed any signs to ticket machines and the train was ready to leave, we applied this principle to the situation in Copenhagen - we asked the conductor to give us tickets - there was never any question of not paying and the conductor clearly felt sorry for us and believed us as HE then ENCOURAGED us to appeal and also asked a second colleague to confirm that there were NO TICKET MACHINES where we came! We therefore feel that your case is a set of

unfortunate events and that it is completely unreasonable to treat us as cheats. We have always maintained that we are happy to pay the fare due - or even a premium fare if that's what would be charged if buying on a train - there is not question about this, It seems that a set of rather unusual circumstances resulted in the situation we are now in.

We therefore request that you reconsider our case.

As we said we are very happy to pay the fare we owe and would do so by return."

### Indklagede anfører hertil:

"

1. We are sorry to have misunderstood that the complainants did not ask two and but only one metro employee how to get to the airport, but cannot see that it matters to the case.

Although the complainants did not see one of the many ticket vending machines on their way to the platform, they could have realized that they had to get a ticket before boarding the train if they had read the signs and information boards and then asked for directions to nearest ticket machine.

2. As we have already illustrated in our first answer, there are both information boards and door signs at Nørreport station, which points out that you may not board without a ticket. Of course it is regrettable that the complainants have not seen the signs, but we do not think it is Metro's responsibility.
3. We have already emphasized that we do not take into consideration whether our passengers have tried to cheat or not, and therefore we do not believe that it is important that the complainants could just have left the train when they saw the steward. The complainants *were* on the train and they did not have tickets and therefore they each received a fare evasion ticket just like anyone else without a valid ticket would have gotten.

How things work, for example, in Germany, is not relevant to this case. When a steward issues a fare evasion ticket, he or she are not allowed to perform any sort of case processing, but may only check if a valid ticket can be presented and, if not, issue a fare evasion ticket. But of course, the stewards are instructed to provide good service and of course inform passengers how and where to complain should they wish to do so.

The complainants consider themselves to be affected by such unusual circumstances that they should not pay their fare evasion tickets. However, the fact that the complainants are used to ticket barriers from home, that they did not read the signs on the train doors and the information boards on the platform, and that they became confused and just boarded the train, in our view, cannot be Metro's responsibility, and we therefore maintain our claim for payment of both fare evasion tickets in total DKK 1500, -"

På ankenævnets vegne



Tine Vuust  
Nævnformand