

AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

- Journalnummer:** 2018-0282
- Klageren:** XX på egne vegne og på vegne af sin hustru YY
England
- Indklagede:** Metroselskabet I/S v/Metro Service A/S
CVRnummer: 21 26 38 34
- Klagen vedrører:** To kontrolafgifter på hver 750 kr. for rejse uden billetter, da de ikke kunne finde billetautomaten og troede, at man kunne købe billetter ombord.
- Parternes krav:** Klageren ønsker, at kontrolafgifterne nedsættes til rejsens pris
Indklagede fastholder fuld betaling af kontrolafgifterne
- Ankenævnets sammensætning:** Nævningsformand, landsdommer Tine Vuust
Torben Steenberg (2 stemmer)
Asra Stinus
Helle Berg Johansen

Ankenævnet for Bus, Tog og Metro har på sit møde den 6. marts 2019 truffet følgende

AFGØRELSE:

Metroselskabet I/S v/Metro Service A/S er berettiget til at opretholde kravet om betaling af kontrolafgifterne på i alt 1.500 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, dennes hustru og deres baby skulle den 3. december 2018 rejse med metroen fra Nørreport st. til Lufthavnen st. Parret kunne ikke finde en billetautomat på Nørreport st. De valgte på trods af dette at stige ombord på metroen og regnede med, at billetterne kunne købes ombord.

På strækningen mellem Amager Strand st. og Lufthavnen st. var der kontrol af parrets rejsehjemmel, hvor de hver blev pålagt en kontrolafgift på 750 kr.

Klagerens hustru henvendte sig til Metro Service den 3. december 2018, hvor hun anmodede om, at hendes kontrolafgift blev nedsat til rejsens pris. Hun gjorde gældende, at de havde ledt efter billetautomaten på Nørreport st., men ikke havde kunnet finde den, og at de troede, at man kunne købe billetter ombord.

Metro Service fastholdt den 4. december hendes kontrolafgift med henvisning til selvbetjeningsprincippet, at hun ikke kunne forvise gyldige billet ved kontrollen, at man skal være i besiddelse af gyldig billet, inden man stiger ombord på metroen, samt at der findes information på engelsk på alle stationer, herunder følgende skilt på alle døre til metroen:



Den 4. december 2018 anmodede klageren Metro Service om at nedsætte hans kontrolafgift og gjorde det samme gældende som hustruen.

Metro Service fastholdt den 6. december 2018 klagerens kontrolafgift med samme begrundelse, som blev givet ved fastholdelsen af hustruens kontrolafgift. Selskabet tilføjede yderligere, at det er muligt at få hjælp til billetkøb eller lignende ved de gule opkaldspunkter på stationerne, og de medsendte et foto, hvoraf det fremgik, at der forefindes billetautomater på Nørreport st.:



ANKENÆVNETS BEGRUNDELSE:

Ægteparret kunne ved kontrollen den 3. december 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 6 stop uden billet.

Der findes billetautomater på gadeniveau på Nørreport st. og på etagen over metroperronen, men på baggrund af at ankenævnet jævnligt modtager klager fra passagerer og især turister, som ikke er opmærksom på skiltningen på elevatorerne og perronen, henstiller ankenævnet til Metro Service om på en endnu tydeligere måde at skilte med, at billetautomaten ikke befinder sig på selve perronen, og hvor der i stedet kan købes billetter.

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.

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 og opdateret 1. november 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 på 750 kr. for voksne. 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.

PARTERNES ARGUMENTER OVER FOR ANKENÆVNET:

Klageren anfører følgende:

"Myself and my wife were issued with fare evasion tickets on our way from Norreport station to the airport (we were visiting Copenhagen on our first family holiday together from Friday 30th November until Monday 3rd December). We have both (as per the advice given by the attendants that issued us both with our tickets) filed a complaint to see whether any grace could be given based on the set of circumstances that led to us not having a valid ticket for travelling on the metro.

To recap my original complaint

The reason we didn't have a ticket was that I couldn't find a ticket machine in Norreport station. Whilst I readily admit that that may sound unlikely, it is true (in that I attempted to find one inside the station). We took the lift down (it was right next to the food market on a square we had lunch at) to the Metro and at platform level there wasn't any ticket machines. The reason we took the lift (other than it being the most convenient) was that we had our baby, pushchair, suitcases etc so the escalator and stairs weren't an option. As I couldn't find a ticket machine at platform level, I went up the escalators to the next level (leaving my wife and child on the Metro platform) and I couldn't find a machine at that level either. And the only other signs I saw were directions to other

platforms and the exit. I went onto one of the other platforms and again I didn't find a ticket machine.

My logic sounds wrong saying it now but my thinking – and reasoning – for not exiting the station to see if there were ticket machines outside the station was that in my personal experience (in England and other countries) tickets are available inside the station so exiting the station didn't seem to make sense. And there wasn't a member of staff or office etc available to ask what I should do. So the only option that I thought I had was to go back to the Metro platform and catch a train.

Possibly being under the stress of needing to get to the airport on time and beginning to mentally prepare myself for handling my baby on the flight led me to thinking less clearly than I otherwise would. I am obviously annoyed with myself for not investigating further. But hopefully this explanation goes some way to explaining what happened and the reason that myself, my wife and baby didn't have a ticket for our journey to the airport. And that our intention was never to avoid the ticket fare.

It was more that the above sequence of events led us to being on the metro without a ticket. I understand that there will be lots of individuals that intentionally evade fares, so it is an almost impossible task to police the matter at the time (and afterwards) so that there is a fair outcome for all situations. But my wife and I would really appreciate it if there was an alternative outcome that you could consider. For example paying for our tickets retrospectively or even paying more for our tickets (but just not the full fine). It is a lot of money, even more so in the run up to Christmas.

End of original complaint

In the reply to our complaints it explained the metro system and reasons for the evasion ticket (which we were aware of as the attendants that issued us with the tickets and advised us to complain gave us the same reasons/information) and highlighted that there is information relating to tickets somewhere in the station (they sent a picture of one of these) and also include a picture of a ticket machine somewhere at Norreport station.

In response to the reply and to add to my original complaint, I have a few additional comments (that you hopefully will be able to consider when looking into our appeal).

1. I agree that your system works well at the airport – it is easy to see where to pay and we did this. However, we did pay for my toddler (18 months) and later found out that we did not have to, so this is not clear and we in fact paid extra for that journey when we arrived in Copenhagen.
2. The system does not work well if using the lift at Norreport (which your colleague who fined us agreed with). I feel that this discriminates against those with children or disabilities.
3. It was certainly not easy for me to see how to purchase tickets elsewhere at Norreport. We are conscientious, law abiding people and it was our intention and desire to buy tickets.
4. There was no visible signage to me or my wife at Norreport. Nor could we see anywhere to pay at subsequent stations. It appears that the ticket machines are hidden behind a wall which does not make it helpful.

5. The male member of staff who checked our tickets was rude, unhelpful and in fact aggressive towards my wife, which I found very unhelpful and upset her.

As I have said, it was never our intention to evade the fare. We are not questioning/challenging your rules, and are not disputing them. We are just asking that our case – with the extra detail – could be considered further. As I get a sense that our original complaints were treated like a typical fare evasion scenario rather than an honest mistake/unfortunate situation. Thank you”

Indklagede anfører følgende:

“Please find enclosed our comments regarding the above mentioned complaint.

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 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.

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 had no tickets directly to an operator in our control tower, which is manned 24 hours a day.

In the case in question, the complainant and his wife was met by two stewards inspecting tickets on the 13th of December 2018 at app. 12:37 between Amager Strand station and Lufthavnen station. As the couple had no tickets, a fare evasion ticket was issued to each of them, according to the travel regulations.

The couple explained that they ate lunch at Torvehallerne and then took the elevator closest to Torvehallerne down to the Metro.

The couple also explained that they ate lunch at Torvehallerne and then took the elevator closest to the Torvehallerne down to the Metro. As they were down on the platform they could not see a ticket machine and the complainant's wife and children were therefore standing on the platform while the complainant himself took the escalator up to find a ticket machine.

The complainant stated that he could not find a ticket machine at Nørreport station and that the couple assumed that they could only buy tickets for the train. The complainant also states that he could not see any staff to ask.

Since Nørreport station is Copenhagen's busiest traffic hub, we always have uniformed staff present at the station every day between kl. 07 – 20, who would like to help with everything regarding the metro

It is correct that there is no ticket machine on the platform at Nørreport station. This is simply due to safety at the busy station. But of course there are several ticket machines at Nørreport station, both inside and outside, see the pictures below:



The complainant stated that after lunch they used the elevator closest to the Torvehallerne. The specific elevator does not stop at the ticket machines, as stated in both Danish and English, see the following photos:



When standing on the platform itself, you can see the signs on all the platform screen doors, which indicates that you have to get a ticket before boarding. Identical signs are set in the lifts.





Although we can understand that one might be stressed at the idea of having to get to the airport on time and at the thought of having an 18-month-old child on the flight, we do not think it may be apologetic for not having acquired tickets before boarding the train. That the couple informs that they bought a ticket to their children when they arrived in Copenhagen even if it had not actually been necessary is not relevant to the specific case.

It's an important part of the stewards education, being friendly and service minded and we're deeply sorry if the couple did not feel met that way. However, we must also emphasize that when stewards control tickets, they are obliged to issue fare evasion tickets if no valid tickets can be displayed.

At Metro we do not distinguish between an intentional or unintentional mistake, but relate exclusively to the facts. The fact is that the complainants did not have valid tickets when they were inspected why the fare evasion tickets are imposed correctly. As the missing tickets are not due to conditions that Metro can be held responsible for, we maintain our claim for the fare evasion tickets 00771525 and 00776740 for the total amount of DKK 1500"

Klageren anfører hertil:

"Our comments on the answer from the Metro Service are **that it was not our intention to board the train without a ticket**, or that we dispute the Metro Services' response that there are ticket machines located somewhere in Norreport station (I mention this point as I feel the Metro Services' response hasn't focused on our reasons and the set of circumstances we presented in our case). Our appeal is based around our attempted to get a ticket and the circumstances we found ourselves in, that we feel led to us not being able to get a ticket before boarding. Those being that **I couldn't (in the area of the station we were in) find a ticket machine (nor did I see a uniformed member of staff to ask) and nor did I see signs directing me to where I could obtain a valid ticket.**

So whilst I can understand (and can't dispute in principle) the Metro Services's response that there are ticket machines somewhere in the station, and stickers on the platform – their response doesn't (in my opinion at least) completely discredit our reasons for not having a ticket. To me, the important things to raise and focus on are that there were no directions in the lift as to where to obtain a ticket, no directions on the platform as to where to obtain a ticket and nor at the level at

the top of the escalators. The fact that there are no visual way finding aids telling you where to go to obtain a ticket in the lift, on the platform and on the area at the top of the escalators, should in my opinion be taken into consideration as valid reasons to counter the Metro Services's response in our case and ultimately support our case.

I do hope that the reasons presented are sufficient for you to consider our case as being different to someone who has intentionally attempted to evade a fare. The fact that I attempted to get a ticket (ie we didn't just go to the platform and board the train straight away) should be evidence enough of this (cameras from the station will confirm my attempts and you will see me leaving the platform and looking for a machine).

I currently feel that we are am being made examples of rather than fairly treated as to me there are a number of details (provided by us) that surely suggest we weren't trying to evade the fare. And it also makes me question what grounds a member of the public (or tourist) needs in order for their appeal to be fairly considered if ours isn't a suitable example of where leniency could be granted. I bring this up as the true function of a complaint or appeals process is to hear both sides of a story and consider whether the consequences (the fare evasion ticket fine in this case) are appropriate and fair. And it is probably clear by now that I feel that hasn't happened so far.

And for these reasons I feel there is a case of either dismissing the fare evasion tickets or considering a more lenient/more closely aligned fine to the actual cost of the tickets that we were not able to obtain on the day."

Indklagede anfører hertil:

"We have carefully read the complainant's recent comments and we can certainly reject the fact that the complainant and his wife are being used as examples rather than being treated fairly.

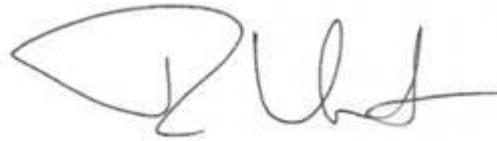
At Metro, we all treat the same, the requirement for a valid ticket applies to everyone. No difference is made, everyone is traveling on the same terms. Thus, there are no special rules for pensioners, children, tourists, students, disabled people or any other type of interest groups - except for certain disability organizations which have previously concluded special agreements for some of their members.

As we have explained in our previous answers, we cannot relate to the passengers' intentions of buying tickets but solely for facts. The fact is that the complainant and his wife did not have tickets when they were inspected.

The complainant suggests that we review the video surveillance in order to observe, on our own, that the complainant was trying to obtain tickets and not just on board straight away. It is true that Metro's areas are being video-monitored. But Metro cannot review the recorded material. Under current law, video recordings are stored between 14 and 21 days before being overplayed unless the police have requested that we save a recording. Only the police are allowed to review the material and then only if there have been incidents of police interest. But even though we could have seen the video material, it would not be relevant to the case, as it is not possible for us to relate to our passengers' intentions but only to whether a valid ticket can be presented.

With reference to the above and to our previously submitted replies, we maintain the requirement for payment of the fare evasion tickets.”

På ankenævnets vegne



Tine Vuust
Nævnshoved