

## AFGØRELSE FRA ANKENÆVNET FOR BUS, TOG OG METRO

<b>Journalnummer:</b>	2018-0181
<b>Klageren:</b>	XX 2450 Kbh. V
<b>Indklagede: CVRnummer:</b>	Movia 29896569
<b>Klagen vedrører:</b>	Kontrolafgift på 750 kr. for forevisning af tillægsbillet til 1 zone.
<b>Parternes krav:</b>	Klageren ønsker kontrolafgiften annulleret, da det ikke var tydeligt at se på billetten, at den kun var gyldig sammen med anden rejsehjemmel Indklagede fastholder kontrolafgiften
<b>Ankenævnets sammensætning:</b>	Nævnensformand, 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:**

Movia er berettiget til at opretholde kravet om betaling af kontrolafgiften på 750 kr.

Beløbet skal betales til Movia, 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](http://www.domstol.dk), [www.advokatsamfundet.dk](http://www.advokatsamfundet.dk) og /eller eget forsikringssselskab om eventuel forsikringsretshjælp.

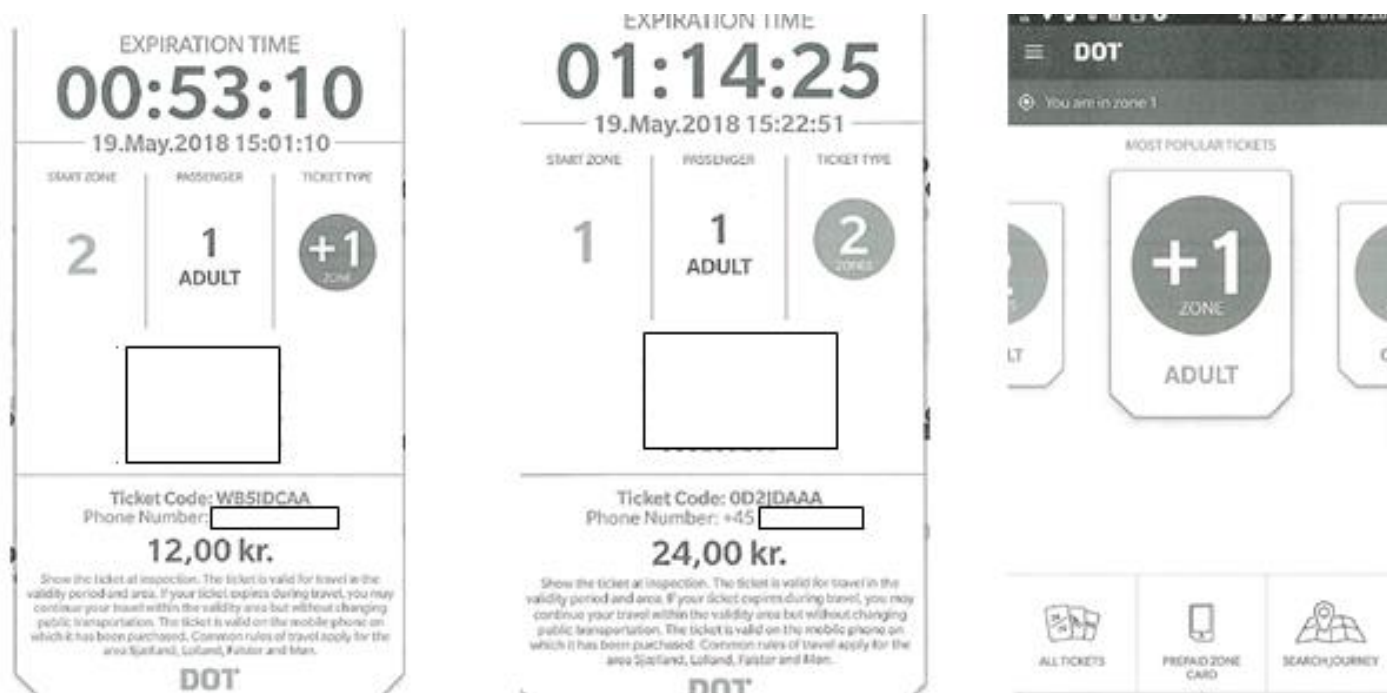
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### SAGENS OMSTÆNDIGHEDER:

Klageren, som er bosiddende i Danmark og engelsktalende, rejste den 19. maj 2018 med buslinje 350S, hvor han ved ombordstigning til chaufføren foreviste en 1-zones tillægsbillet købt i zone 02. Ifølge klageren nikkede chaufføren, hvorfor han regnede med, at billetten var gyldig rejsehjemmel.

Ved stoppestedet Elmegade i zone 01 steg kontrollør på bussen, som kl. 15:21 udstedte en kontrolafgift på 750 kr. til klageren for manglende zone. En billet til 1 zone kun er gyldig for en voksen som tillægsbillet til anden rejsehjemmel. Kl. 15:22 købte klageren en 2-zoners billet i zone 01.

Den 20. maj 2018 anmodede han Movia om at annullere kontrolafgiften med den begrundelse, at chaufføren havde nikket, og da det ikke ved køb af 1 zone-billet i app'en er tydeligt, at billetten kun er gyldig som tillægsbillet. Klageren vedhæftede disse bilag:

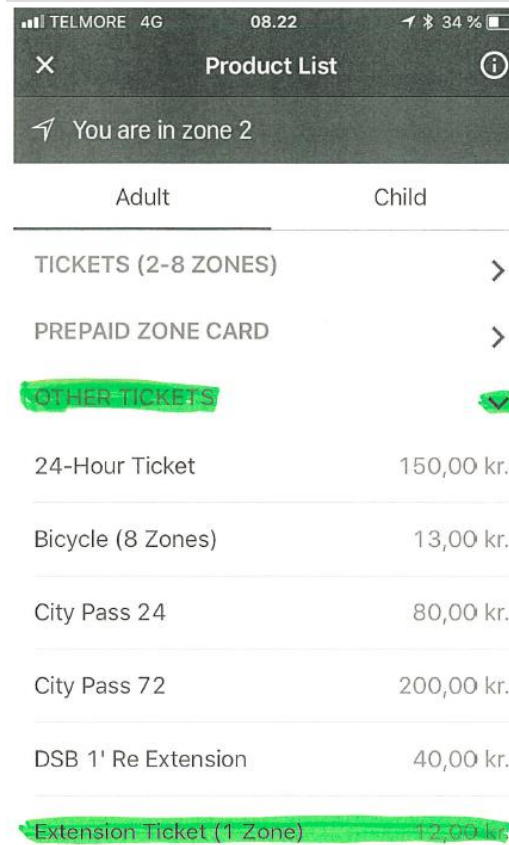
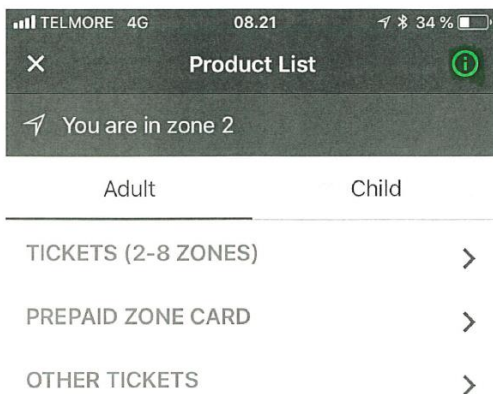


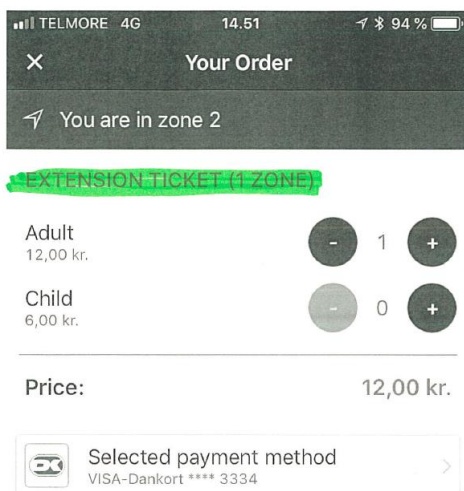
Movia fastholdt kontrolafgiften i svar af 21. august 2018 med henvisning til selvbetjeningsprincippet, og at chaufføren kun foretager tilfældig kontrol af passagerernes rejsehjemmel.

Derpå indgav klageren klage til ankenævnet, hvori han blandt andet har anført, at et nik fra chaufføren må sidestilles med en egentlig godkendelse af ens rejsehjemmel, samt at der ingen notits gives til kunden, om at en billet til 1 zone ikke kan bruges uden anden billet.

Movia har gjort gældende, at klageren rejste i 2 zoner på en 1 zones billet, og at billetten kun er gyldig med anden billet eller kort. Desuden har de indsendt skærbilleder, som viser de oplysnin-

ger, der gives i app'en. Først vises 2-8 zoners billetter, fordi dette er de ordinære billetter. Under "Other tickets" ligger "extension ticket", som på engelsk betyder tillæg/udvidelse. Der står et + foran 1-tallet på billetten, der indikerer, at den er et tillæg til anden billet, hvilket præciseres i informationsteksten for billetten:





### Extension Ticket (1 Zone)

If you have a valid ticket or a commuter card, and you have to travel across more zones than covered by the ticket, you can buy an extension ticket for one additional zone. The additional zone must share a border with the zones on your ticket or commuter card. Read more about extension tickets for commuter cards in the guidance document (Section 5.2) on this page: [www.dinoffentligetransport.dk/faelles-rejseregler](http://www.dinoffentligetransport.dk/faelles-rejseregler) (in Danish). The extension ticket is only valid in conjunction with a valid ticket or commuter card. If you buy the extension ticket during the journey, it must be purchased within the validity area for your ticket/commuter card. If you are outside the validity area for your ticket/commuter card, the extension ticket must be purchased before boarding. If you require more than 1 zone, you can buy a regular ticket for 2-8 zones under the same regulations. The validity time for the extension ticket with a ticket for short journeys (2-8 zones) is calculated by adding a quarter of an hour to the time on the ticket for a

## ANKENÆVNETS BEGRUNDELSE:

Klageren købte en billet i zone 02, som kun var gyldig i 1 zone i tillæg til anden rejsehjemmel. Han blev kontrolleret i zone 01, og allerede fordi han rejste i 2 zoner på en billet til 1 zone, blev kontrolafgiften pålagt med rette.

Hertil kommer, at en tillægsbillet kun gyldig med anden billet eller kort, idet man som minimum skal købe billet til 2 zoner i den kollektive trafik.

Det er ankenævnets opfattelse, at tillægsbillet, som i app'en står anført under "other tickets" som "extension ticket" - som altså tillæg/udvidelse, på tilstrækkelig tydelig vis meddeler til kunden, at der ikke er tale om en billet, som kan anvendes isoleret. Det af klageren anførte om, at + tegnet kan forstås som en udvidelse fra 0 zoner til 1 zone, kan ikke føre til et andet resultat.

Når man trykker på "i" – tegnet (informationstegnet) på "+1 zone-billetten", oplyses det, at billetten kun kan anvendes sammen med en gyldig billet eller pendlerkort.

Ankenævnet finder, at chaufføren ved at nikke i det foreliggende tilfælde ikke har overtaget ansvaret fra klageren om at kunne forevise gyldig rejsehjemmel ved kontrol. Som det fremgår af rejse-reglerne vejleder chaufføren på passagerens direkte forespørgsel.

Da det ikke er en betingelse for pålæggelse af en kontrolafgift, at passagerne bevidst har søgt at unddrage sig fuld betaling for rejsen, finder ankenævnet, at der ikke har foreligget sådanne særlige omstændigheder, at klageren skal fritages for kontrolafgiften.

Det kunne dog overvejes af selskaberne bag app'en, om det vil være hensigtsmæssigt, hvis der i forbindelse med køb af en tillægsbillet kommer en pop-up besked om, at den kun er gyldig i forlængelse med gyldig billet eller kort.

## **RETSGRUNDLAG:**

Hjemmelen til at udstede kontrolafgifter i busser fremgår af lov om trafikkselskaber nr. 323 af 20. marts 2015 § 29:

### *"Kapitel 5 Kontrolafgift og straffebestemmelser*

**§ 29.** Et trafikkselskab kan fastsætte kontrolafgift og ekspeditionsgebyr for passagerer, der ikke foreviser gyldig rejsehjemmel (billet eller kort).

*Stk. 2.* Et trafikkselskab kan forlange, at en passager, der ikke er i besiddelse af gyldig rejsehjemmel (billet eller kort), skal forevise legitimation med henblik på at fastslå passagerens identitet.

*Stk. 3.* Kontrolafgifter og ekspeditionsgebyrer efter stk. 1 inddrives efter lov om inddrivelse af gæld til det offentlige. Restanceinddrivelsesmyndigheden kan endvidere inddrive skyldige beløb efter stk. 1 ved modregning i overskydende skat."

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.

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 ANKENÆVNEN:**

### **Klageren anfører følgende:**

- "1) At the time the DOT Mobilbillet app described the 1 Zone Extension as a 1 Zone ticket, no notice was given to indicate to the user that it was not valid without another ticket.
- 2) I made reasonable endeavors to ensure that the 'ticket' was indeed valid by showing the purchased ticket to the driver. His affirmative response re-assured me that the ticket was indeed valid.
- 3) I have sent screenshots showing the ticket purchased (including the fact its called a 'ticket' when the inspector informed me that it isn't in fact a ticket at all) and showing that I only traveled within 1 Zone to

Movia. I believed, based on the app and the driver's response that this was what was allowed by the ticket, I have to therefore pose the question - if I was attempting to 'cheat' in anyway why would I have spent money on an invalid ticket? Why not just buy no ticket at all? If I had been fined for having no ticket, or for travelling through more zones than the ticket stated was allowed, then I would not be contesting this. However I purchased the ticket in good faith and made reasonable endeavors to ensure its validity. Upon being informed that the ticket was in fact, not a ticket at all, I offered to purchase the correct ticket then and there on the app, however I was told this couldn't be done and instead I'd have to appeal to Movia - an appeal that has taken them 3 months to answer only for them to deny it.


4) Having had my claim rejected by the same company that stands to profit from the fine - a conflict of interest if I've ever seen one - I would like to appeal to yourselves as an independent body."

### Indklagede anfører følgende:

According to the rules on travel (Section 2.4 - Fælles landsdækkende rejseregler), the customer must have a valid ticket or card at the beginning of the journey. The customer must make sure, that the ticket/card is valid during the entire journey (Section 2.3 - Fælles landsdækkende rejseregler).

The bus driver only does random checks, which means that he checks either zone, date, time or type of ticket. The driver can provide guidance at the request of the customer (section 2.4 – Fælles landsdækkende rejseregler). The customer has not requested this according to his complaint as he writes 'I showed my ticket to the 350S bus driver when I boarded and was given a nod, I therefore thought everything was in order'.

Based on the phone number the customer provided ([redacted] 55) we have checked the purchases at the time of the control. The extension ticket (1 zone) is ordered at 15:01:10 (appendix 2 and 5).

At the control, the customer could only show **the extension ticket, which is only valid 'in conjunction with a valid ticket or commuter card'** according to the information on the app (appendix 12). The information about the different tickets can be found by clicking on the information-icon at the top right () (appendix 8) at the product list. It also states here, that **'In order for your ticket to be valid, you must at least buy 2 zones'** (Appendix 11).

On the app, it furthermore shows three different options (appendix 8): 'Tickets (2-8 zones)', indicating that a ticket is at least 2 zones (appendix 10), 'Prepaid zone card' and 'Other tickets'. Under 'Other tickets' the extension ticket is found (appendix 9), which indicates, that this is not an ordinary ticket.

On the front page on the app, the most popular tickets are shown (appendix 3). When the extension ticket is shown, it is as you can see on appendix 3 and 6. When you click on the '+1 zone adult' (extension ticket) it says, that it is an 'Extension ticket (1 zone)' (appendix 7). The extension ticket is furthermore marked with a '+' (appendix 3 and 6) indicating, that it is different from the other types of tickets, that do not have a '+'.

The meaning of extension is according to the Oxford Advanced Learner's Dictionary (appendix 13), that 'an extension is an extension of something else' and can therefore not be used on its own. We therefore argue that the name of the ticket is self-explanatory in regards to only being valid together with another ticket.

**In the decision, Movia has put emphasis on:**

- **that the customer did not make sure to have a valid ticket before entering the bus**
- **that the customer did not request guidance from the driver**
- **that information about the ticket system including the extension ticket is available on the DOT-mobilbilletter app**
- **the extension ticket is only valid 'in conjunction with a valid ticket or commuter card'**
- **in order for your ticket to be valid, you must at least buy 2 zones**

The obligation to pay the fare evasion ticket is not conditioned of, whether the passenger deliberately tried to avoid paying for the journey. It is Movia's opinion, that there has not been circumstances, which exempt the customer from the fare evasion ticket. Therefore, we maintain the fare evasion ticket of 750 DKK.

### Hertil har klageren svaret:

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- 1) "that the customer did not make sure to have a valid ticket before entering the bus".

As I have previously stated I made what I believed to be reasonable endeavours to verify the validity of the ticket I purchased. Movia would appear to be contending that a positive response from one of their bus drivers after being shown a ticket should not be construed as confirmation of that tickets' validity. Instead they contend that I should have read the small print contained within the DOT app, rather than trusting one of their own employees, I find this perplexing and not at all what would be expected of the average person. To address Movia's specific points here:

- a. First that I should not have taken a positive response from their driver as an indication of the ticket's validity – I would ask how else a reasonable person should have interpreted his response to being shown a ticket?
- b. That I should have inferred from the term 'extension' and the inclusion of a plus symbol that my ticket was not valid – why? It seems perfectly reasonable to me to be able to extend your travel from 0 zones to 1 zone, this does this preclude the dictionary definition given. As an aside the idea that the average person should be expected to consult a dictionary definition to determine the specific meaning of a word which has 9 different definitions in order to apply it in a specific context, while waiting for a bus, is, to me, a bit silly.
- c. That I should have consulted the detailed information in the Movia app to discern whether my ticket was valid (rather than just show the driver). Placing information in a non-obvious portion of the app (rather than say, having a warning when you attempt to purchase the 1-zone 'extension' ticket) and then inferring that usage of the app means you should have read this information is facile to say the least. As a comparison software end user license agreements (EULAs) have been repeatedly found to be completely unenforceable because of this very practice, and, given the ease with which this information could be added to the 'extension' ticket purchase page I do wonder why Movia has elected to place the information where they have.

- 2) "That the customer did not request guidance from the driver."

Verbal communication is not the only form of communication as I clearly illustrated in my previous correspondence. The idea that getting a positive, affirmative response from the driver, after showing him my ticket, could be inferred to be anything else than confirmation of the tickets' validity is patently absurd. If it is not part of the driver's job to check tickets (something I wasn't aware of) then they simply shouldn't be looking at them, let alone giving affirmative responses *after* looking at them. If it *is* part of the driver's job to randomly check tickets, as Movia states they do, then how else could one interpret the driver looking at a ticket and nodding other than they were randomly checking the ticket, and then approving it as valid? Movia have shown an affinity for the OED, therefore let me quote here one of the definitions of nodding: "*informal* Approve something by general agreement, without discussion." When taken in the context of an individual showing the driver their ticket, I don't see how the nod could be interpreted as anything other than approval of said ticket for travel on the bus.

The third, fourth and fifth points Movia make are addressed in my responses above. However, while not directly relevant I would like to note some further points for the record:

- Movia state that the fare evasion fee is not conditioned on whether the passenger deliberately tried to avoid paying for the journey. While I'm sure this is technically and legally true it is a curious position to take. This means that Movia want to 'catch' and fine everyone without a valid ticket *regardless of how that came to pass*, producing a form a perverse financial incentive which history tell us, when combined with private enterprise, rarely ends well. Taking this into account things become a bit clearer, Movia have:

- Disregarded their own driver's actions and stated that passengers should do the same.
- Designed an app which does not make it easily apparent that the 'extension' ticket is not valid on its own.
- Deployed an enforcement mechanism whereby inspectors are instructed to issue fines *regardless* of the surrounding circumstances, forcing citizens and guest residents to go through a lengthy arbitration process, many of whom I'm sure do not have the time or the resources to do so and end up paying anyway.
- Taken far longer than the stipulated times to respond not only to my initial appeals request (approximately 3 months) but *also* to the official ABTM request made on the 22<sup>nd</sup> August and only responded to 26 working days later, 16 days after the stipulated 10 day response time. This would appear to me to be to encourage the complainant to rescind their appeal and pay the fine to make things 'go away'.

When this is all added together it becomes immediately apparent to me that Movia's fare evasion apparatus is not setup to dissuade fare-dodging but rather to collect the maximum revenues possible, something I'm quite sure was not intended by the legal tenants that allow Movia to collect such fines in the first place."

### Til dette har Movia gjort gældende:

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The costumer writes in his original complaint to the Appeal Board for Bus, Train and Metro (appendix 4) "3) I have sent screenshots showing the ticket purchased (...) and showing that I only travelled within 1 zone to Movia". The costumer furthermore writes; "If I had been fined for (...) travelling through more zones than the ticket stated was allowed, then I would not be contesting this".

The extension ticket, that the costumer believed to be an actual ticket on its own, it bought with start zone 002 (see appendix 3). The ticket inspectors got on the bus at Elmegade, which is in zone 001 (see appendix 1 and 2). The costumer did therefore not travel within one zone, as he believed, that he could with the extension ticket. The costumer travelled through two zones, from zone 002 to 001. The ticket was therefore not valid either according to the costumer's believe of validity. However in order for your ticket to be valid, you must at least buy two zones (appendix 5)

The ticket system is based on self-service. When travelling by train, bus and metro, the customer must be in possession of a valid travel document according to the Joint national Travel Regulations section 2.3. According to the Joint national Travel Regulations, the driver does not perform a systematic ticket inspection, but can give guidance at the customer's request (Section 2.4), which the costumer did not request. Upon receipt of a travel document, the customer must ensure that the ticket is correct for the desired purpose. Customers who do not, when requested, present valid travel documents, including having correctly checked in on rejsekort for their travel, must pay an inspection fee, according to the Joint national Travel Regulations section 2.7.1.



The following is a sum up of the entire argumentation from Movia:

- the customer's ticket was not valid either according to his own believe of validity
- the customer did not make sure to have a valid ticket before entering the bus
- the customer did not request guidance from the driver
- information regarding the ticket system including the extension ticket is available on the DOT-mobilbilletter app
- the extension ticket is only valid 'in conjunction with a valid ticket or commuter card'
- in order for your ticket to be valid, you must at least buy 2 zones (appendix 5)

The obligation to pay the fare evasion ticket is not conditioned of, whether the passenger deliberately tried to avoid paying for the journey. It is Movia's opinion, that there has not been circumstances, which exempt the customer from the fare evasion ticket. Therefore, we maintain the fare evasion ticket of 750 DKK.

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På ankenævnets vegne



Tine Vuust  
Nævnensformand