

TORT

Energy and Utilities – Electricity – Claim for loss of revenue – Tampered meter – Whether respondent liable to pay for loss of revenue – Whether appellant had to prove respondent's liability – Electricity Supply Act 1990, section 38(3) and (4)

Tenaga Nasional Bhd v Dunia Raya Enterprise Sdn Bhd

[2015] 6 CLJ 751, Court of Appeal

Facts As a result of a dispute between the appellant, Tenaga Nasional Berhad, and the respondent regarding loss of revenue as a result of meter tampering, the appellant disconnected the respondent's electric supply. To reconnect it, the respondent had to pay RM250,000 to the appellant. The appellant's claim was based on section 38(3)¹ of the Electricity Supply Act 1990 ("the Act"). At the High Court, the respondent contended that they were not liable to pay as the appellant failed to prove that the respondent had tampered with the meter. The respondent also argued that the meter was locked and that the keys to the padlock were in the custody and control of the appellant at all material time. The High Court Judge dismissed the appellant's claim and allowed the respondent's counterclaim for the return of RM250,000. Hence, this appeal.

Issue The issue was whether the appellant could claim for loss of revenue against the respondent in a civil action through a written statement under section 38(4)² of the Act.

Held In dismissing the appeal, it was held that if the appellant was relying on section 38 of the Act in making a claim against its customer, all it needed to show was that the meter was tampered with and not that it was the customer who tampered with it. However reliance on section 38(4) could be made only when the conditions in section 38(4) were fulfilled. On the facts of the case, since the appellant had not complied with the mandatory requirements in section 38(4), it now had to prove actual liability of the respondent in tampering its meter as well as quantum of loss independently.

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¹ Subsection 38(3) of the Act requires the consumer who has committed an offence under the Act to pay for loss of revenue and expenses incurred to reconnect electricity supply.

² Subsection 38(4) of the Act requires amount for the loss of revenue, and the person who is liable to pay for such amount to be stated in the written statement.