

Before the Electrical Workers Registration Board

CE No. 22636

In the matter of:

A disciplinary hearing before the Electrical Workers Registration Board

Between:

The Ministry of Business Innovation and Employment

And

Edward Law a registered and licensed electrical worker (I 2102, EW 030609, Electrician) (the Respondent)

**Decision of the Board in Respect of the Conduct of an Electrical Worker
Under section 147G and 147M of the Electricity Act 1992**

Hearing Location:

Auckland

Hearing Type:

In Person

Hearing and Decision Date:

19 October 2023

Board Members Present:

Mr R Keys, Registered Inspector (Presiding)

Mr M Orange, Barrister

Ms S Cameron, Registered Electrician

Mr T Wiseman, Registered Inspector

Mr J Hutton, Registered Inspector

Ms E Mogford, Lawyer

Appearances:

L Dennehy for the Investigator

Procedure:

The matter was considered by the Electrical Workers Registration Board (the Board) under the provisions of Part 11 of the Electricity Act 1992 (the Act), the Electricity (Safety) Regulations 2010 (the Regulations) and the Board's Disciplinary Hearing Rules.

Board Decision:

The Respondent **has** committed disciplinary offences under sections 143(a)(i), 143(a)(ii) and 143(f) of the Act.

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Summary of the Board’s Decision

- [1] The Respondent carried out prescribed electrical work (PEW) in a negligent manner when issued a Warrant of Electrical Fitness (WoEF) for a connectable installation (a caravan) that was not compliant in that it had an incorrect type of residual current device. Because the caravan was not compliant, his WoEF was false or misleading. The Respondent also carried out PEW in a manner that was contrary to an enactment when he failed to affix a WoEF sticker to the caravan.
- [2] The Board fined the Respondent \$500 and ordered that he pay costs of \$225. The fine and costs were reduced on the basis that the Respondent accepted his wrongdoing, and the matter was dealt with on the basis of an agreed statement of facts. A record of the disciplinary offending will be recorded on the public Register for a period of three years.

Introduction

- [3] The hearing resulted from a complaint about the conduct of the Respondent and a report under section 147G(1) of the Act from the Investigator that the complaint should be considered by the Board.
- [4] The Respondent was served with a notice setting out the alleged disciplinary offences the Investigator reported should be considered by the Board. They were:

First Alleged Disciplinary Offence

1. On or around 4 April 2022 at [Omitted], Mr Edward Law has carried out or caused to be carried out prescribed electrical work in a manner contrary to any enactment relating to prescribed electrical work that was in force at the time the work was done being an offence under section 143(a)(ii) of the Act, IN THAT, he issued a Warrant of Electrical Fitness on a Bailey Pegasus Brindisi type caravan despite:
 - (a) Failing to verify the RCD in place was intended to operate under residual pulsating direct current conditions; and/or
 - (b) Failing to complete the Warrant of Electrical Fitness fixed to the Caravan

In breach of regulation 78 of the Electricity (Safety) Regulations 2010.

Or in the Alternative

2. On or around 4 April 2022 at [Omitted], Mr Edward Law has carried out or caused to be carried out prescribed electrical work in a negligent or incompetent manner being an offence under section 143(a)(i) of the Act, IN THAT, he issued a Warrant of Electrical Fitness on a Bailey Pegasus Brindisi type caravan despite:
 - (a) Failing to verify the RCD in place was intended to operate under residual pulsating direct current conditions; and/or
 - (b) Failing to complete the Warrant of Electrical Fitness fixed to the Caravan.

Second Alleged Disciplinary Offence

3. On 4 April 2022 Mr Edward Law at [Omitted], has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he issued a Warrant of Electrical Fitness on a Bailey Pegasus Brindisi type caravan, that did not meet all the lawful requirements as set out in regulation 78 of Electricity(Safety) Regulations 2010.

- [5] Prior to the hearing, the Respondent and the Board were provided with all of the documents the Investigator had in his/her power or possession.
- [6] No Board Members declared any conflicts of interest in relation to the matters under consideration.

Function of Disciplinary Action

- [7] The common understanding of the purpose of professional discipline is to uphold the integrity of the profession. The focus is not punishment, but the protection of the public, the maintenance of public confidence and the enforcement of high standards

of propriety and professional conduct. Those purposes were recently reiterated by the Supreme Court of the United Kingdom in *R v Institute of Chartered Accountants in England and Wales*¹ and in New Zealand in *Dentice v Valuers Registration Board*².

Procedure

[8] The matter proceeded on the basis of an Agreed Statement of Facts.

Evidence

[9] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed³. The Board notes, as regards evidence in proceedings before it, that the provisions of section 147W of the Act apply. This section states:

In all proceedings under this Part, the Board may, subject to section 156, receive as evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matter before it, whether or not it would be admissible as evidence in a court of law.

[10] The Board heard from the Respondent prior to it making a decision.

[11] The general rule is that all facts in issue, or relevant to the issue in a case, must be proved by evidence. As the Investigator and Respondent agreed to the facts as outlined above, it was not necessary to call any further evidence or to test the evidence as outlined in the Statement.

First Offence

[12] The complaint related to the certification of a caravan. The allegations were that the Respondent, who carried out a Warrant of Electrical Fitness (WoEF) on the caravan (a connectable installation⁴), failed to verify that the correct type of residual current device (RCD) was in place (a type AC was installed whereas a type A was required) and that he failed to complete the WoEF that he had affixed to the caravan.

[13] The Respondent accepted the allegations, which were laid in the alternatives of negligence or incompetence under section 143(a)(i) of the Act and contrary to an enactment under section 143(a)(ii). He stated that, when he carried out the WoEF, he was under time pressure placed on him by the owner and that the RCD installed was in a cupboard that he could not easily access because it had clothing in it. He

¹ *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

² [1992] 1 NZLR 720 at p 724

³ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

⁴ Section 2 of the Act defines a connectable installation as: *connectable installation, in relation to a vehicle, a relocatable building, or a pleasure vessel, means an electrical installation of that vehicle, relocatable building, or pleasure vessel that is designed or intended for, or capable of, connection to an external power supply that operates at or above such voltage as is prescribed for the purposes of this definition by regulations made under section 169; and includes any electrical appliance that is connected, or intended to be connected, to any such installation*

accepted that he should have made sure he had more time and that he did have access.

- [14] The caravan was a new caravan that had been imported. As such, under regulation 78(2)(c) of the Safety Regulations, a WoEF for a connectable installation that has been imported must be issued in accordance with AS/NZS 3001, but only after an assessment for compliance with Part 1 of AS/NZS 3000. The Respondent did not carry out a Part 1 assessment, but that was not an issue pursued by the Investigator.

The RCD

- [15] The Respondent accepted that he had not installed the correct type of RCD. The Safety Regulations stipulate that a connectable installation cannot be supplied with electricity without a WoEF,⁵ and that a WoEF for a connectable installation must be issued in accordance with AS/NZS 3001, which, in turn, mandates the type of RCD that is to be used.⁶
- [16] In *Graham* [2020] EWRB 22184, the Board decided that issuing a WoEF was prescribed electrical work (PEW). As such, and given the factors noted above, the Respondent's PEW was carried out in a manner that was contrary to an enactment, which is a form of strict liability offence⁷ in that all that needs to be proven is that the relevant enactment has been breached, in the instance the Electricity (Safety) Regulations 2010 and cited standard AS/NZS3001:2008.
- [17] The Board went on to consider whether the conduct reached the threshold for a finding of negligence or incompetence.
- [18] Negligence is the departure by an electrical worker, whilst carrying out or supervising prescribed electrical work, from an accepted standard of conduct. It is judged against those of the same class of licence as the person whose conduct is being inquired into. This is described as the *Bolam*⁸ test of negligence which has been adopted by the New Zealand Courts.⁹
- [19] Incompetence is a lack of ability, skill or knowledge to carry out or supervise prescribed electrical work to an acceptable standard. *Beattie* put it as "*a demonstrated lack of the reasonably expected ability or skill level*". In *Ali v Kumar and Others*,¹⁰ it was stated as "*an inability to do the job*". The Board did not hear any evidence that indicated the Respondent was incompetent. As such, it did not consider incompetence any further. There was evidence that the conduct may have come within the definition of negligence.

⁵ Regulation 76 of the Safety Regulations

⁶ Clause 2.3.3 of AS/NZS 3001:2008

⁷ The Board does not need to find that there was intention, fault or negligence: *Blewman v Wilkinson* [1979] 2 NZLR 208

⁸ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

⁹ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

¹⁰ *Ali v Kumar and Others* [2017] NZDC 23582 at [30]

[20] The New Zealand Courts have stated that the assessment of conduct in a disciplinary context is a two-stage test.¹¹ The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction. This is often referred to as the seriousness test. In *Collie v Nursing Council of New Zealand*,¹² it was stated as:

[21] Negligence or malpractice may or may not be sufficient to constitute professional misconduct and the guide must be standards applicable by competent, ethical and responsible practitioners and there must be behaviour which falls seriously short of that which is to be considered acceptable and not mere inadvertent error, oversight or for that matter carelessness.

[21] The Respondent's stated reason for the failure was that he was put under time pressure. Safety checks are important, and the process when issuing a WoEF should not be compromised. As the Respondent acknowledged, he should have put the WoEF assessment off to another day when a thorough assessment could have been completed. The Board would expect a competent Electrical Inspector to know what should be done and the standard to which it had to be done. As such, the Board finds that the conduct did reach the threshold for a finding of negligence.

The WoEF Sticker

[22] The WoEF sticker that was affixed to the caravan did not have all of the required details on it. Regulation 78(3) of the Safety Regulations provides:

- (3) *A person who issues a warrant of electrical fitness must—*
 - (c) *complete a warrant of electrical fitness sticker that is in the form prescribed or approved by WorkSafe; and*
 - (d) *affix the sticker in a prominent place on the connectable installation.*

[23] The Respondent issued a paper WoEF and affixed a sticker. He did not complete any details on that sticker. It was, in essence, a blank WoEF. It did not, therefore, meet the legislative requirements, and the Board finds that the Respondent carried out PEW in a manner that was contrary to regulation 78 of the Safety Regulations. The conduct was not serious enough to warrant a finding of negligence.

Second Offence

[24] The charge under section 143(f) of the Act related to the provision of a false or misleading return. In determining whether a return is false or misleading is a

¹¹ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

¹² [2001] NZAR 74

question of fact to be decided objectively, and the intention of the issuer is irrelevant.¹³

- [25] The return was a paper WoEF certificate was issued under the Safety Regulations. It contained a verification statement that the caravan met the requirements detailed in AS/NZS 3001. As an incorrect RCD was installed, the caravan did not meet the requirements of the standard, and the WoEF was false or misleading.

Board's Conclusion and Reasoning

- [26] The Board has decided that the Respondent **has**:
- (a) Carried out PEW in a negligent manner when he certified a connectable installation with an incorrect type of RCD contrary to section 143(a)(i) of the Act;
 - (b) Carried out PEW in a manner that was contrary to an enactment when he failed to affix a WoEF to the caravan contrary to section 143(a)(ii) of the Act; and
 - (c) Provided a false or misleading return contrary to section 143(f) of the Act.

Penalty, Costs and Publication

- [27] Having found that one or more of the grounds in section 143 applies the Board must, under section 147M of the Act¹, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.

- [28] The Respondent made submissions at the hearing as regards penalty, costs and publication.

Penalty

- [29] The Board has the discretion to impose a range of penalties, which are set out in section 147M of the Act. Exercising that discretion and determining the appropriate penalty requires that the Board balance various factors, including the seriousness of the conduct and any mitigating or aggravating factors present.¹⁴ It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:¹⁵
- (a) protection of the public and consideration of the purposes of the Act;¹⁶
 - (b) deterring other Electrical Workers from similar offending;¹⁷
 - (c) setting and enforcing a high standard of conduct for the industry;¹⁸

¹³ *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

¹⁴ *Ellis v Auckland Standards Committee* 5 [2019] NZHC 1384 at [21]; cited with approval in *National Standards Committee (No1) of the New Zealand Law Society v Gardiner-Hopkins* [2022] NZHC 1709 at [48]

¹⁵ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

¹⁶ Section 3 Building Act

¹⁷ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹⁸ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

- (d) penalising wrongdoing;¹⁹ and
- (e) rehabilitation (where appropriate).²⁰

- [30] Overall, the Board should assess the conduct against the range of penalty options available in section 318 of the Act, reserving the maximum penalty for the worst cases²¹ and applying the least restrictive penalty available for the particular offending.²² In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty²³ that is consistent with other penalties imposed by the Board for comparable offending.²⁴
- [31] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to it considering any aggravating and/or mitigating factors present.²⁵
- [32] The Board adopted a starting point of a fine of \$500. The starting point was lower than the starting point for negligence matters because the negligence found was at the lower end of the scale. The Respondent accepted his wrongdoing and cooperated. He does not hold a current practising licence and stated he was not sure if he would do so in the future. He has not previously appeared before the Board. Taking those mitigating factors into account, the Board reduced the fine to \$250.

Costs

- [33] Under section 147N of the Act, the Board may require the Respondent to pay the Board any sum that it considers just and reasonable towards the costs and expenses of, and incidental to the investigation, prosecution and the hearing.
- [34] The Respondent should note that the High Court has held that 50% of total reasonable costs should be taken as a starting point in disciplinary proceedings and that the percentage can then be adjusted up or down having regard to the particular circumstances of each case.²⁶
- [35] In *Collie v Nursing Council of New Zealand*,²⁷ where the order for costs in the tribunal was 50% of actual costs and expenses, the High Court noted that:

¹⁹ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

²⁰ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354; *Shousha v A Professional Conduct Committee* [2022] NZHC 1457

²¹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²² *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

²³ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁴ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁵ In *Lochhead v Ministry of Business Innovation and Employment* 3 November [2016] NZDC 21288 the District Court recommended that the Board adopt the approach set out in the Sentencing Act 2002.

²⁶ *Cooray v The Preliminary Proceedings Committee* HC, Wellington, AP23/94, 14 September 1995, *Macdonald v Professional Conduct Committee*, HC, Auckland, CIV 2009-404-1516, 10 July 2009, *Owen v Wynyard* HC, Auckland, CIV-2009-404-005245, 25 February 2010.

²⁷ [2001] NZAR 74

But for an order for costs made against a practitioner, the profession is left to carry the financial burden of the disciplinary proceedings, and as a matter of policy that is not appropriate.

- [36] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,²⁸ the High Court noted:

[46] All cases referred to in Cooray were medical cases and the Judge was careful to note that the 50 per cent was the general approach that the Medical Council took. We do not accept that if there was any such approach, it is necessarily to be taken in proceedings involving other disciplinary bodies. Much will depend upon the time involved, actual expenses incurred, attitude of the practitioner bearing in mind that whilst the cost of a disciplinary action by a professional body must be something of a burden imposed upon its members, those members should not be expected to bear too large a measure where a practitioner is shown to be guilty of serious misconduct.

[47] Costs orders made in proceedings involving law practitioners are not to be determined by any mathematical approach. In some cases 50 per cent will be too high, in others insufficient.

- [37] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings, simple, moderate and complex. The current matter was simple. Adjustments based on the High Court decisions above are then made.
- [38] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$225 toward the costs of and incidental to the matter. In setting the amount of costs the Board took into account that the Respondent had agreed to the matter proceeding by way of an Agreed Statement of Facts.

Publication

- [39] As a consequence of its decision, the Respondent's name and the disciplinary outcomes will be recorded in the public Register as required by the Act²⁹. The Board can, pursuant to section 147Z of the Act, also order publication over and above the public register notation. Under section 147Z the Board may, if no appeal is brought within 20 working days of its decision, direct the Registrar to cause a notice stating the effect of the decision or order, the reasons for the decision or order, and (unless the Board directs otherwise) the name of the person in respect of whom the decision or order was made, to be published in the Gazette and any other publications as may be directed by the Board.
- [40] As a general principle, such further public notification may be required where the Board perceives a need for the public and/or the profession to know of the findings

²⁸ CIV-2011-485-000227 8 August 2011

²⁹ Refer sections 128 of the Act

of a disciplinary hearing. This is in addition to the Respondent being named in this decision.

- [41] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990³⁰. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction³¹. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive³². The High Court provided guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*³³.
- [42] The courts have also stated that an adverse finding in a disciplinary case usually requires that the name of the practitioner be published in the public interest³⁴. It is, however, common practice in disciplinary proceedings to protect the names of other persons involved as naming them does not assist the public interest.
- [43] Based on the above, the Board will publish a general article in the Electron summarising the matter but will not order further publication. The Respondent will not be identified in the Electron.
- [44] The Respondent should also note that the Board has not made any form of order under section 153(3) of the Act, which allows for prohibition of publication.

Penalty, Costs and Publication Orders

- [45] For the reasons set out above, the Board directs that:

Penalty: Pursuant to section 147M(1)(f) of the Electricity Act 1992, the Respondent is ordered to pay a fine of \$250.

Costs: Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$225 (GST included) towards the costs of, and incidental to, the inquiry of the Board.

Publication: The Registrar shall record the Board's action in the Register of Electrical Workers in accordance with section 128(1)(c)(viii) of the Act.

The Respondent will be named in this decision, which will be publicly available on the Board's website.

A summary of the matter will not be published by way of an article in the Electron, which will focus on the lessons to be learnt from the case. The Respondent will not be named in the publication.

³⁰ Section 14 of the Act

³¹ Refer sections 200 and 202 of the Criminal Procedure Act

³² *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

³³ *ibid*

³⁴ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

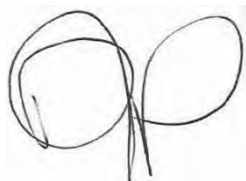
- [46] The Respondent should note that the Board may refuse to relicense an electrical worker who has not paid any fine or costs imposed on them.

Right of Appeal

- [47] The right to appeal Board decisions is provided for in sections 147ZA and 147ZB of the Actⁱⁱ.

Signed and dated this

3rd day of November 2023



R Keys
Presiding Member

ⁱ **Section 147M of the Act**

- (1) *If the Board, after conducting a hearing, is satisfied that a person to whom this Part applies is guilty of a disciplinary offence, the Board may—*
- (a) *do 1 or more of the following things:*
 - (i) *order that the person's registration or practising licence (or both) be cancelled:*
 - (ii) *order that the person's provisional licence be cancelled:*
 - (iii) *order that the person may not apply to be reregistered or re-licensed before the expiry of a specified period:*
 - (b) *order that the person's registration or practising licence (or both), or the person's provisional licence, be suspended—*
 - (i) *for any period that the Board thinks fit; or*
 - (ii) *until that person does 1 or more of the things specified in subsection (2):*
 - (c) *order that the person's registration or practising licence (or both), or the person's provisional licence, be restricted for any period that the Board thinks fit, in either or both of the following ways:*
 - (i) *by limiting the person to the work that the Board may specify:*
 - (ii) *by limiting the person to doing, or assisting in doing, work in certain circumstances (for example, by limiting the person to work only on approved premises or only in the employ of an approved employer):*
 - (d) *order that the person be disqualified from doing or assisting in doing prescribed electrical work that the person would otherwise be authorised to do in that person's capacity as a person to whom this Part applies—*
 - (i) *permanently, or for any period that the Board thinks fit; or*
 - (ii) *until that person does 1 or more of the things specified in subsection (2):*
 - (e) *order the person to do 1 or more of the things specified in subsection (2) within the period specified in the order:*
 - (f) *order the person to pay a fine not exceeding \$10,000:*
 - (g) *order that the person be censured:*
 - (h) *make no order under this subsection.*

-
- (2) *The things that the person can be required to do for the purposes of subsection (1)(b), (d), and (e) are to—*
- (a) *pass any specified examination:*
 - (b) *complete any competence programme or specified period of training:*
 - (c) *attend any specified course of instruction.*
- (3) *The Board may take only 1 type of action in subsection (1) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b), (c), (e) or (g).*
- (4) *No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an—*
- (a) *offence for which the person has been convicted by a court; or*
 - (b) *infringement offence for which the person has been issued with an infringement notice and has paid an infringement fee.*
- (5) *The Board must not exercise any authority conferred by this section in respect of any offence committed by any person before the date of that person's registration or, as the case may be, the date on which that person's provisional licence was issued if at that date the Board was aware of that person's conviction for that offence.*
- (6) *If a person is registered under Part 10 in respect of more than 1 class of registration, the Board may exercise its powers under subsection (1)(a) to (e) in respect of each of those classes or 1 or more of those classes as the Board thinks fit.]*

ii Section 147ZA Appeals

- (1) *A person who is dissatisfied with the whole or any part of any of the following decisions, directions, or orders may appeal to the District Court against the decision, direction, or order:*
- (e) *any decision, direction, or order under any of sections 108, 109, 120, 133, 137, and 153 or Part 11 (except section 147C).*

Section 147ZB Time for lodging appeal

An appeal under section 147ZA must be brought within—

- (a) *20 working days after notice of the decision, direction, or order was given to, or served on, the appellant; or*
- (b) *any further time that the District Court may allow on application made before or after the expiration of that period.*