

Before the Electrical Workers Registration Board

CE No.CE22754

In the matter of:

A disciplinary hearing before the Electrical Workers Registration Board

Between:

The Ministry of Business Innovation and Employment

And

Rowan Ainsworth a registered and licensed electrical worker (E 262862, EW 132479, 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:

Wellington

Hearing Type:

In Person

Hearing and Decision Date:

17 April 2024

Board Members Present:

Mr R Keys, Registered Inspector (Presiding)

Ms A Yan, Registered Electrical Engineer

Ms S Cameron, Registered Electrician

Mr T Wiseman, Registered Inspector

Appearances:

J Ellison 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) and (f) of the Act.

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Summary of the Board’s Decision

- [1] The Board found that the Respondent had carried out prescribed electrical work in a negligent manner when he failed to earth a battery installed as part of a photovoltaic system. The Board also decided that the Respondent had provided a false or misleading return when he certified the work as safe and lawful when it was not.
- [2] The Respondent was fined \$750 and ordered to pay costs of \$250. The fine and costs were reduced on the basis that the Respondent accepted that he had committed the offences, and the matter was dealt with on the basis of an Agreed Statement of Facts. A record of the offences will be recorded on the public Register for a period of three years, the Respondent will be named in this decision, and an article summarising the matter will be published in the Electron.

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 6 March 2023 at *[OMITTED]*, Mr Rowan Ainsworth 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 failed to install electrical equipment in accordance with manufacturer instructions, specifically in relation to its connection to a protective earthing system in accordance with AS/NZS in breach of regulation 59 of the Electricity (Safety) Regulations 2010.

Or in the Alternative

2. On or around 6 March 2023 at [OMITTED], Mr Rowan Ainsworth 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 failed to install electrical equipment in accordance with manufacturer instructions, specifically in relation to its connection to a protective earthing system.

Second Alleged Disciplinary Offence

3. On or around 6 March 2023 at [OMITTED], Mr Rowan Ainsworth has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he certified Prescribed Electrical Work as lawful and safe when it was in breach of mandatory installation requirements.

[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.

Function of Disciplinary Action

[6] 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.

[7] Disciplinary action under the Act is not designed to redress issues or disputes between a complainant and a respondent. In *McLanahan and Tan v The New Zealand Registered Architects Board*,³ Collins J. noted that:

“... the disciplinary process does not exist to appease those who are dissatisfied The disciplinary process ... exists to ensure professional standards are maintained in order to protect clients, the profession and the broader community.”

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 [2016] HZHC 2276 at para 164

- [8] The Board can only inquire into “the conduct of an electrical worker” with respect to the grounds for discipline set out in section 143 of the Act. It does not have any jurisdiction over contractual matters.

Procedure

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

Evidence

- [10] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁴. 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.

- [11] The Board heard from the Respondent prior to it making a decision.
- [12] 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

- [13] The charges put before the Board 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). The Board decided that the Respondent had conducted himself in a negligent manner.
- [14] The Agreed Statement of Facts set out that the Respondent had been engaged in March 2023 to carry out PEW associated with the installation of a Photovoltaic (PV) array, inverter, and battery. The entity that contracted for the work complained that the Respondent had failed to earth the battery, causing a person to receive a light electric shock.
- [15] The Investigator instructed Mr Mark Carter, an Electrical Inspector (I 262132), to provide a technical review of the complaint and the Respondent’s PEW. His review formed the basis of the disciplinary offences laid by the Investigator.
- [16] The Respondent accepted that he had failed to install electrical equipment in accordance with manufacturer instructions, specifically in relation to its connection to a protective earthing system. He also accepted that this amounted to negligence

⁴ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

- [17] 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*⁵ test of negligence, which has been adopted by the New Zealand Courts.⁶
- [18] The New Zealand Courts have stated that an assessment of negligence in a disciplinary context is a two-stage test⁷. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.
- [19] When considering what an acceptable standard is, the Board must have reference to the conduct of other competent and responsible practitioners and the Board's own assessment of what is appropriate conduct, bearing in mind the purpose of the Act,⁸ which includes protecting the health and safety of members of the public in connection with the supply and use of electricity, and promoting the prevention of damage to property in connection with the supply and use of electricity. The test is an objective one and, in this respect, it has been noted that the purpose of discipline is the protection of the public by the maintenance of professional standards and that this could not be met if, in every case, the Board was required to take into account subjective considerations relating to the practitioner⁹.
- [20] The Board also notes, as regards acceptable standards, that all prescribed electrical work must comply with the Electricity (Safety) Regulation 2010 and the cited Standards and Codes of Practice in Schedule 2 of the Regulations. As such, when considering what is and is not an acceptable standard, they must be taken into account.
- [21] Turning to seriousness in *Collie v Nursing Council of New Zealand*,¹⁰ the Court's noted, as regards the threshold for disciplinary matters, that:

[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.

⁵ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

⁶ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

⁷ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

⁸ *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

⁹ *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

¹⁰ [2001] NZAR 74

[22] The prescribed electrical work was carried out on a low-voltage installation. Under the Safety Regulations, the work had to be carried out in accordance with AS/NZS 3000.

[23] The evidence before the Board established that the prescribed electrical work had not been completed in accordance with AS/NZS 3000.

[24] Additionally, the Board noted that provisions of regulation 13 of the Safety Regulations had also been breached. It states:

13 Doing work on works, installations, fittings, and appliances

(1) *A person who does work on any works or installation, or on any part of any works or installation, must ensure—*

(a) *that the resulting works or installation, or part of the works or installation, is electrically safe; and*

(b) *if the work is on only part of any works or installation, that the work has not adversely affected the electrical safety of the rest of the works or installation.*

[25] The terms electrically safe and unsafe are defined in regulation 5 of the Safety Regulations:

5 Meanings of electrically safe and electrically unsafe

In these regulations, unless the context otherwise requires—

electrically safe means, in relation to works, installations, fittings, appliances, and associated equipment, that there is no significant risk that a person or property will be injured or damaged by dangers arising, directly or indirectly, from the use of, or passage of electricity through, the works, installations, fittings, appliances, or associated equipment

electrically unsafe means, in relation to works, installations, fittings, appliances, and associated equipment, that there is a significant risk that a person may suffer serious harm, or that property may suffer significant damage, as a result of dangers arising, directly or indirectly, from the use of, or passage of electricity through, the works, installations, fittings, appliances, or associated equipment.

[26] Further, regulation 20 deems certain installations to be unsafe. This is because earthing forms part of the safety systems that are relied on when there is an electrical fault:

20 Electrically unsafe works and installations

- (1) *Works and installations are deemed to be electrically unsafe if there are not measures in place that do at least 1 of the following:*
- (c) *prevent an electric current passing through the body of a person on contact with any part of the works or installations, or limit that current so that the magnitude and duration of the shock current cannot exceed the IEC shock current standards.*

[27] Also, under regulation 73A(1) an electrical worker has certain obligations that must be complied with and which were not:

73A Before connecting installations to power supply

- (1) *Before connecting to a power supply a low or extra-low voltage installation or part installation on which prescribed electrical work has been done, the person doing the connection must—*
- (e) *in the case of a low voltage installation or part installation, do all of the following:*
- (iv) *if the supply is from a MEN system, verify that there is a main earthing system.*

[28] On the basis of the above, the Board decided that the contraventions were more just “contrary to an enactment” and that negligence was the appropriate finding. Further, as earthing is a fundamental electrical safety requirement, the Board decided that the Respondent’s failure to earth was serious enough to warrant a disciplinary finding.

Second Offence

[29] 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 question of fact to be decided objectively, and the intention of the issuer is irrelevant.¹¹

[30] The returns referred to are issued under the Regulations. An Electrical Safety Certificate is required for all prescribed electrical work. It must contain a statement to the effect that the installation or part installation is connected to a power supply and is safe to use. There is also a requirement that a Certificate of Compliance is issued for high and general-risk prescribed electrical work. A Certificate of

¹¹ *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

Compliance must state that the prescribed electrical work has been done lawfully and safely and that the information in the certificate is correct.

- [31] In the Agreed Statement of Facts, the Respondent accepted that he had certified PEW as lawful and safe when it was not because the PEW had been completed in a manner that was in breach of mandatory installation requirements as regards earthing. Given the Board's findings on the First Offence and the legal commentary noted above, it follows that the Respondent has committed the second offence.

Board's Decision

- [32] The Board has decided that the Respondent **has**:
- (a) carried out prescribed electrical work in a negligent manner being an offence under section 143(a)(i) of the Act; and
 - (b) provided a false or misleading return being an offence under section 143(f) of the Act.

Penalty, Costs and Publication

- [33] Having found that one or more of the grounds in section 143 applies, the Board must, under section 147M of the Actⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [34] The Respondent made submissions at the hearing as regards penalty, costs and publication.

Penalty

- [35] 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.¹² It is not a formulaic exercise, but there are established underlying principles that the Board should take into consideration. They include:¹³
- (a) protection of the public and consideration of the purposes of the Act;¹⁴
 - (b) deterring other Electrical Workers from similar offending;¹⁵
 - (c) setting and enforcing a high standard of conduct for the industry;¹⁶
 - (d) penalising wrongdoing;¹⁷ and

¹² *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]

¹³ Cited with approval in *Robinson v Complaints Assessment Committee of Teaching Council of Aotearoa New Zealand* [2022] NZCA 350 at [28] and [29]

¹⁴ Section 3 Building Act

¹⁵ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

¹⁶ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724

¹⁷ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

(e) rehabilitation (where appropriate).¹⁸

- [36] 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 cases¹⁹ and applying the least restrictive penalty available for the particular offending.²⁰ In all, the Board should be looking to impose a fair, reasonable, and proportionate penalty²¹ that is consistent with other penalties imposed by the Board for comparable offending.²²
- [37] In general, when determining the appropriate penalty, the Board adopts a starting point based on the principles outlined above prior to considering any aggravating and/or mitigating factors present.²³
- [38] The Board adopted a starting point of a fine of \$1,500. The starting point took into account the fact that a person did receive an electric shock. The mitigating factors are the Respondent's acceptance that he had committed the offences and his good record to date as an electrical worker. Taking those factors into account the Board has reduced the fine to \$750.

Costs

- [39] 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.
- [40] 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.²⁴
- [41] In *Collie v Nursing Council of New Zealand*,²⁵ where the order for costs in the tribunal was 50% of actual costs and expenses, the High Court noted that:

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.

¹⁸ *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

¹⁹ *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²⁰ *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818

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

²² *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354

²³ 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.

²⁴ *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.

²⁵ [2001] NZAR 74

[42] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,²⁶ 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.

[43] 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 moderate. Adjustments based on the High Court decisions above are then made.

[44] Based on the above, the Board's costs order is that the Respondent is to pay the sum of \$250 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

[45] 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 Act²⁷. 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.

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

²⁶ CIV-2011-485-000227 8 August 2011

²⁷ Refer sections 128 of the Act

- [47] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990²⁸. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²⁹. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive³⁰. 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*³¹.
- [48] 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 interest³². 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.
- [49] 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 be identified in the Electron.

Penalty, Costs and Publication Orders

- [50] 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 \$750.

Costs: Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$250 (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 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 be named in the publication.

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

²⁸ Section 14 of the Act

²⁹ Refer sections 200 and 202 of the Criminal Procedure Act

³⁰ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

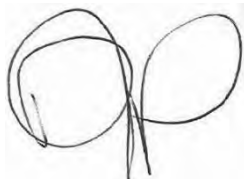
³¹ *ibid*

³² *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Right of Appeal

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

Signed and dated this 8th day of May 2024.



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.