

Before the Electrical Workers Registration Board

CE No. 22514

In the matter of:

A disciplinary hearing before the Electrical Workers Registration Board

Between:

The Ministry of Business Innovation and Employment

And

Robert Sheik Aminud Dean a registered and licensed electrical worker (E 253456, EW 106263, 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:

by audio-visual link

Hearing Type:

In Person

Hearing and Decision Date:

13 December 2022

Board Members Present:

Mr R Keys, Registered Inspector (Presiding)

Ms M Kershaw, Registered Electrician

Mr M Macklin, Registered Inspector

Ms J Davel, Lay Member

Ms A Yan, Registered Electrical Engineer

Appearances:

J Hilario 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 a disciplinary offence under section 143(f) of the Act.

Contents

Summary of the Board’s Decision	2
Introduction	2
Function of Disciplinary Action	2
Procedure	3
Evidence	3
Board’s Conclusion and Reasoning	4
Penalty, Costs and Publication	4
Penalty	4
Costs.....	5
Publication	6
Penalty, Costs and Publication Orders	7
Right of Appeal	7

Summary of the Board’s Decision

- [1] The Respondent failed to provide a return within 20 working days of completion, contrary to section 143(f) of the Act. The Board decided, in the particular circumstances of the matter, that it would not take any disciplinary action. The Board ordered that the Respondent pay costs of \$225.

Introduction

- [2] 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.
- [3] The Respondent was served with a notice setting out the alleged disciplinary offence the Investigator reported should be considered by the Board. It was:
- On or around 5 December 2021 at [OMITTED], Auckland, Mr Robert Dean has failed to provide a return being an offence under section 143(f) of the Act, IN THAT, he failed to provide a Certificate of Compliance and Electrical Safety Certificate within 20 days of the completion of Prescribed Electrical Work.
- [4] 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.
- [5] No Board Members declared any conflicts of interest in relation to the matters under consideration.

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.”

- [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] As noted, the matter proceeded on the basis of an Agreed Statement of Facts. The Statement set out that the Respondent was retained to install a heat pump on 5 December 2021. On 16 December 2021, a Certificate of Compliance was requested. On 20 December 2021, the Respondent travelled to Fiji for family reasons. On 10 January 2022, a complaint was made about the failure to provide a Certificate of Compliance.
- [13] The Respondent did not return to New Zealand until 15 March 2021, and on 23 March 2022, he emailed a Certificate of Compliance to the Complainant. The

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

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

provision was outside of the 20 working days specified in the Safety Regulations. The Respondent accepted that he had failed to provide a return within 20 working days.

- [14] 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.

Board's Conclusion and Reasoning

- [15] The Board has decided that the Respondent **has** failed to provide a return being an offence under section 143(f) of the Act, in that, he failed to provide a Certificate of Compliance and Electrical Safety Certificate within 20 days of the completion of Prescribed Electrical Work.
- [16] The complaint was that the Respondent had failed to provide a return required under an enactment, in this instance, a Certificate of Compliance (CoC).
- [17] Under the Safety Regulations, an Electrical Safety Certificate (ESC) must be issued for all prescribed electrical work. There is also a requirement that a Certificate of Compliance is issued for high and general risk prescribed electrical work. The installation of a heat pump is general risk work. As such, both an ESC and a CoC had to be issued.
- [18] Under regulation 74C of the Safety Regulations, an ESC must be issued within 20 days after connection. Under regulation 74E(2), a CoC must be issued within 20 days of completion. Regulation 74E(4) requires that a copy be provided on demand within 10 working days from listed persons. Those persons include the person who contracted the work and the owner or occupier of the installation.
- [19] The heat pump was connected, the prescribed electrical work was completed, and a valid request for the certification had been made. The certification was not provided within any of the specified timeframes. The offence has been committed.

Penalty, Costs and Publication

- [20] 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.
- [21] The Respondent made submissions at the hearing as regards penalty, costs and publication.

Penalty

- [22] The purpose of professional discipline is to uphold the integrity of the profession; the focus is not punishment but the enforcement of a high standard of propriety and professional conduct. The Board does note, however, that the High Court in *Patel v*

*Complaints Assessment Committee*⁵ commented on the role of “punishment” in giving penalty orders stating that punitive orders are, at times, necessary to provide a deterrent and to uphold professional standards. The Court noted:

[28] I therefore propose to proceed on the basis that, although the protection of the public is a very important consideration, nevertheless the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty to be imposed.

- [23] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,⁶ the Court noted that whilst the statutory principles of sentencing set out in the Sentencing Act 2002 do not apply to the Electricity Act they have the advantage of simplicity and transparency. The Court recommended adopting a starting point for a penalty based on the seriousness of the disciplinary offending prior to considering any aggravating and/or mitigating factors. The same applies to disciplinary proceedings under the Electricity Act.
- [24] The offending was technical in nature and minor. A complaint was made soon after the time frame had elapsed. There were extenuating personal circumstances for the non-provision. The Respondent had to return to Fiji for urgent family reasons. He did not have an internet connection whilst in Fiji. He has now adopted an electronic system that enables him to issue certification on completion.
- [25] The Board decided, in the particular circumstances of the case, that it would not take any disciplinary action. As such, the Board decided, under section 147M(1)(h) to make no order.

Costs

- [26] 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.
- [27] 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 case⁷.
- [28] In *Collie v Nursing Council of New Zealand*,⁸ 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.

⁵ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

⁶ 3 November 2016, CIV-2016-070-000492, [2016] NZDC 21288

⁷ *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.

⁸ [2001] NZAR 74

[29] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,⁹ 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.

[30] 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.

[31] 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

[32] As the Board has made no order under section 147M of the Act, the Respondent's name and the disciplinary outcomes **will not** be recorded in the Public Register.

[33] The Board can, pursuant to section 147Z of the Act, order the publication of a disciplinary finding. 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.

[34] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990¹⁰. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction¹¹. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive¹². The High Court provided

⁹ CIV-2011-485-000227 8 August 2011

¹⁰ Section 14 of the Act

¹¹ Refer sections 200 and 202 of the Criminal Procedure Act

¹² *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*¹³.

- [35] 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 interest¹⁴. 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.
- [36] Given that the Board has not made an order under section 147M of the Act, the Board has decided that it will not publicise the matter.
- [37] The Respondent should note that the Respondent will be named in this decision and that the Board has not made any form of an order under section 153(3) of the Act, which allows for the prohibition of any publication.

Penalty, Costs and Publication Orders

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

Penalty: Pursuant to section 147M(1)(h) of the Electricity Act 1992, the Board has decided to make no order.

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 Respondent will be named in this decision.
The matter will not be recorded on the Register.
There will be no further publication.

- [39] 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.

Right of Appeal

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

Signed and dated this 25th day of January 2023



R Keys
Presiding Member

¹³ *ibid*

¹⁴ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

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.*