

Before the Electrical Workers Registration Board

CE No. 22540

In the matter of:

A disciplinary hearing before the Electrical Workers Registration Board

Between:

The Ministry of Business Innovation and Employment

And

Alan Gellert a registered and licensed electrical worker (I 254535, EW 056001, Inspector) (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:

5 December 2022

Board Members Present:

Mr M Orange, Barrister (Presiding)
Mr R Keys, Registered Inspector
Ms M Kershaw, Registered Electrician
Mr M Macklin, Registered Inspector

Appearances:

John 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 not** committed a disciplinary offence.

Contents

Summary of the Board’s Decision	2
Introduction	2
Function of Disciplinary Action	3
Procedure	4
Evidence	4
Board’s Conclusion and Reasoning	6
Right of Appeal	6

Summary of the Board’s Decision

[1] The Respondent has not committed a disciplinary offence.

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 offences the Investigator reported should be considered by the Board. They were:

First Alleged Disciplinary Offence

1. On or around 14 July 2021 at [OMITTED], Hamilton, Mr Alan Gellert 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 installed a light switch which did not comply with mandatory installation requirements for basic protection as set out in AS/NZS 3000:2007 1.5.4.1 as he failed to prevent accidental direct or indirect contact with the exposed live parts at the rear of the switch in breach of regulations 13(1), 16(1), 20(1), and 59(1) of the Electricity (Safety) Regulations 2010.

Or in the Alternative

2. On or around 14 July 2021 at [OMITTED], Hamilton, Mr Alan Gellert 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 installed a light switch which did not comply with mandatory installation requirements for basic protection as set out in AS/NZS 3000:2007 1.5.4.1 as he failed to prevent accidental direct or indirect contact with the exposed live parts at the rear of the switch.

Second Alleged Disciplinary Offence

3. On or around 14 July 2021 at [OMITTED], Hamilton, Mr Alan Gellert has failed to provide a return being an offence under section 143(f) of the Act, IN THAT, he failed to provide an Electrical Safety Certificate within 20 days of the completion of Prescribed Electrical Work.

Third Alleged Disciplinary Offence

4. On or around 14 July 2021 at [OMITTED], Hamilton, Mr Alan Gellert has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he falsely certified the prescribed electrical work as being lawful, when this work did not comply with mandatory requirements pertaining to basic protection in breach of regulations 74A and 74D of the Electricity (Safety) Regulations 2010.

- [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.

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

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 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.

[13] The Board maintains a Practice Note which provides directions for Agreed Statements of Fact. Included in Practice Note is the following:

2.3 Agreed statements of fact can also provide a structured environment in which a respondent may accept appropriate responsibility for his or her disciplinary offending which can then be reflected in any penalty imposed.

[14] The Statement set out the allegations together with the Respondent's defence which was stated as follows:

12. Mr Gellert also states that the house was in the process of being painted, and that he sighted multiple switches that had been removed. He maintains that the photographs in the complaint form were of a switch elsewhere in the house, not the switch he had worked on. He also maintains that he had sent the ESC to Mr Denigan with the invoice at the end of the month but accepts that he does not have evidence to support this.

[15] The Statement also contained the following statement:

14. Mr Gellert accepts there is insufficient evidence that he fixed the switch to the wall in a compliant manner and that he issued the ESC within the prescribed timeframe.

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

- [16] In matters that come before the Board, the burden of proof lies with the Investigator.⁵ It is for the Investigator to establish, on the balance of probabilities, that the disciplinary offences have been committed. The relevant authority is *Z v Dental Complaints Assessment Committee*,⁶ where Justice McGrath in the Supreme Court of New Zealand stated:

[102] The civil standard has been flexibly applied in civil proceedings no matter how serious the conduct that is alleged. In New Zealand it has been emphasised that no intermediate standard of proof exists, between the criminal and civil standards, for application in certain types of civil case. The balance of probabilities still simply means more probable than not. Allowing the civil standard to be applied flexibly has not meant that the degree of probability required to meet the standard changes in serious cases. Rather, the civil standard is flexibly applied because it accommodates serious allegations through the natural tendency to require stronger evidence before being satisfied to the balance of probabilities standard.

[105] The natural tendency to require stronger evidence is not a legal proposition and should not be elevated to one. It simply reflects the reality of what judges do when considering the nature and quality of the evidence in deciding whether an issue has been resolved to “the reasonable satisfaction of the Tribunal”. A factual assessment has to be made in each case. That assessment has regard to the consequences of the facts proved. Proof of a Tribunal’s reasonable satisfaction will, however, never call for that degree of certainty which is necessary to prove a matter in issue beyond reasonable doubt.

- [17] The Respondent does not have to prove that he did not commit the offences.
- [18] The only statement in the Agreed Statement of Facts that implied an acceptance that the Respondent had committed a disciplinary offence was in paragraph 14. It was not an acceptance. Rather it was a statement that the Respondent considered he could not disprove the charges. As noted, he does not have to.
- [19] The Board put it to Counsel for the Investigator and the Investigator that it would not be appropriate for the matter to proceed on the basis of the Agreed Statement of Facts that had been put before the Board. They were offered the opportunity of a hearing where witnesses could be called to give evidence. Counsel and the Investigator were offered an opportunity to confer and take instructions.
- [20] Counsel advised the Board that the Investigator acknowledged and accepted the Board’s concerns and did not wish to pursue a hearing with witnesses on the basis that the nature of the charges did not warrant the expense.

⁵ Section 147T of the Act.

⁶ [2009] 1 NZLR 1

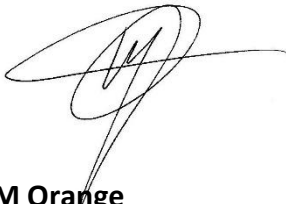
Board's Conclusion and Reasoning

[21] The Board has decided that the Respondent **has not** committed a disciplinary offence on the basis that the Investigator has failed to prove, on the balance of probabilities, that the Respondent committed the disciplinary offences as alleged.

Right of Appeal

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

Signed and dated this 20th day of December 2022.



M Orange
Presiding Member

ⁱ 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.*