

Before the Electrical Workers Registration Board

CE No. 22173
Electrical Worker: Patrick Ginnane (the Respondent)
Registration Number: E 243431
Electrical Worker Number: EW 085040
Registration Class: Electrician

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 Date: 17 June 2020
Decision Date: 17 June 2020

Board Members Present:

Mel Orange (Presiding)
Michael Macklin, Registered Inspector
Monica Kershaw, Registered Electrician
Mac McIntyre, Registered Electrician
Jane Davel, Lay Member
Russell Keys, Registered Inspector
Ashley Yan, Registered Electrical Engineer

Appearances: Toli Sagaga 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.

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Introduction

- [1] 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.
- [2] The Respondent was served with a notice setting out the alleged disciplinary offence the Investigator reported should be considered by the Board. It was that on or around 12 December 2017 at [REDACTED], Mr Patrick Ginnane failed to provide a return being an offence under section 143(f) of the Act, IN THAT, he has failed to provide an electrical safety certificate for low risk prescribed electrical work carried out at the property.
- [3] 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.
- [4] No Board Members declared any conflicts of interest in relation to the matters under consideration.

Function of Disciplinary Action

- [5] 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.

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

- [6] 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.”

- [7] 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

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

- [9] Counsel for the Investigator’s appearance was excused.

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 matter proceeded on the basis of an Agreed Statement of Facts. The Statement set out that the Respondent carried out low risk prescribed electrical work at an installation. The initial work was completed. An electrical safety certificate for it was not issued. It was anticipated that further work would be carried out at the installation. The Respondent did not, however, attend the property again for some six months.

- [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 summary.

Board’s Conclusion and Reasoning

- [13] 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 an electrical safety certificate.

³ [2016] HZHC 2276 at para 164

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

- [14] There is a requirement that an Electrical Safety Certificate be issued for all prescribed electrical work⁵. Regulation 74C of the Safety Regulations stipulates that an electrical safety certificate must be issued as soon as practicable, but in any case no later than 20 working days after connection.
- [15] It is an offence under regulation 74D to fail to provide an electrical safety certificate in accordance with regulation 74C punishable by a Level 2 Penalty. It is also a disciplinary offence under section 143(f) of the Act.
- [16] The disciplinary offence is a strict liability offence. All that need be proven is that the relevant enactment has been breached – in the instance the Electricity (Safety) Regulations 2010. Liability occurs without having to prove any intention, fault or negligence⁶.
- [17] On the basis of the above, the Board finds that the offence has been committed.

Penalty, Costs and Publication

- [18] 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.
- [19] The Respondent made submissions at the hearing as regards penalty, costs and publication.

Penalty

- [20] 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*⁷ 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.

- [21] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*⁸ 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 penalty based on the seriousness of the disciplinary offending prior

⁵ Regulation 74A of the Safety Regulations.

⁶ *Blewman v Wilkinson* [1979] 2 NZLR 208

⁷ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

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

to considering any aggravating and/or mitigating factors. The same applies to disciplinary proceedings under the Electricity Act.

- [22] The Board noted that the transgression was minor in nature and that the Respondent has put systems and processes in place to ensure he does not transgress again. It also noted that the Respondent had intended to return, but accepted that he should have provided the electrical safety certificate following the work being connected to a power supply.
- [23] The disciplinary provisions in section 147M of the Act include a provision that the Board, can if it considers it appropriate, make no order. Given the above factors, the Board has decided that it will, on this occasion, take no action. The Respondent should note, however, that any future transgressions will not be treated so lightly.

Costs

- [24] 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.
- [25] 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 case⁹.
- [26] In *Collie v Nursing Council of New Zealand*¹⁰ 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.

- [27] 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

- [28] As the Board has decided it will not take any action then matter will not be recorded on the Register. Nor will the Board order any further publication of the matter. The Board is not, however, ordering a suppression of this decision or any matters relating to it.

⁹ *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.

¹⁰ [2001] NZAR 74

Penalty, Costs and Publication Orders

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

Penalty: Pursuant to section 147M(1)(h) of the Electricity Act 1992, the Board will not make a penalty order.

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 not 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.

In terms of section 147Z of the Act, there will not be action taken to publicly notify the Board's action.

[30] 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

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

Signed and dated this 29th day of June 2020



Mel Orange
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):*

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- (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.