

Before the Electrical Workers Registration Board

CE No. 22626

In the matter of:

A disciplinary hearing before the Electrical Workers Registration Board

Between:

The Ministry of Business Innovation and Employment

And

Avneet Lal a registered and licensed electrical worker (EST 277572, EW 132572, Electrical Service Technician) (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:

16 November 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:

A Miller 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.....	6
Evidence.....	6
Board’s Decision.....	7
Right of Appeal.....	8

Summary of the Board’s Decision

- [1] The Respondent has not committed a disciplinary offence. The Board’s decision was made on the basis that there was insufficient evidence to establish that he had carried out the prescribed electrical work complained about.

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. Between 8 and 10 April 2022 at [OMITTED], Mr Avneet Lal 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:
 - (a) Failed to ensure the circuit could handle the extra load from a newly installed heat pump; and/or
 - (b) Caused damage to conductor primary insulation by clamping under the cable restraint in the outdoor unit; and/or
 - (c) Failed to use conduit fittings to secure conduit in terminal box; and/or
 - (d) Failed to secure the earth conductor in the earth terminal of the switch socket unit.

In breach of regulations 20(1) and 59(2) of the Electricity (Safety) Regulations 2010.

Or in the Alternative

2. Between 8 and 10 April 2022 at [OMITTED], Mr Avneet Lal 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:
 - (a) Failed to ensure the circuit could handle the extra load from a newly installed heat pump; and/or
 - (b) Caused damage to conductor primary insulation by clamping under the cable restraint in the outdoor unit; and/or
 - (c) Failed to use conduit fittings to secure conduit in terminal box; and/or
 - (d) Failed to secure the earth conductor in the earth terminal of the switch socket unit.

Or in the Alternative

3. Between 8 and 10 April 2022 at [OMITTED], Mr Avneet Lal has negligently created a risk of serious harm to any person, or a risk of significant property damage, through having carried out or caused to be carried out prescribed electrical work being an offence under section 143(b)(ii) of the Act, IN THAT, he failed to secure the earth conductor in the earth terminal of the switch socket unit.

Second Alleged Disciplinary Offence:

4. Between 8 and 10 April 2022 at [OMITTED] Mr Avneet Lal 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:
 - (a) Failed to ensure that conduits were solar protected to prevent failure due to UV damage; and/or
 - (b) Failed to ensure that conduits were terminated in fittings; and/or
 - (c) Failed to ensure the circuit could handle the extra load from newly installed heat pump, resulting in the circuit protection circuit breaker operating.

In breach of regulation 59(2) of the Electricity (Safety) Regulations 2010.

Or in the Alternative

5. Between 8 and 10 April 2022 at [OMITTED] Mr Avneet Lal 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:

- (a) Failed to ensure that conduits were solar protected to prevent failure due to UV damage; and/or
- (b) Failed to ensure that conduits were terminated in fittings; and/or
- (c) Failed to ensure the circuit could handle the extra load from newly installed heat pump, resulting in the circuit protection circuit breaker operating.

Third Alleged Disciplinary Offence:

6. Between 8 and 10 April 2022 at [OMITTED] Mr Avneet Lal 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:
- (a) Failure to install a main switch in Unit 9 to enable the heat pump to be isolated in an emergency; and/or
 - (b) Failed to ensure the circuit could handle the extra load from newly installed heat pump.

In breach of regulation 59(2) of the Electricity (Safety) Regulations 2010.

Or in the Alternative

7. Between 8 and 10 April 2022 at [OMITTED] Mr Avneet Lal 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:
- (a) Failure to install a main switch in Unit 9 to enable the heat pump to be isolated in an emergency; and/or
 - (b) Failed to ensure the circuit could handle the extra load from newly installed heat pump.

Fourth Alleged Disciplinary Offence:

8. Between 8 and 10 April 2022 at [OMITTED] Mr Avneet Lal 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:
- (a) Failed to ensure that conduits were solar protected to prevent failure due to UV damage; and/or
 - (b) Failed to ensure that conduits were terminated in fittings.

In breach of regulation 59(2) of the Electricity (Safety) Regulations 2010.

Or in the Alternative

9. Between 8 and 10 April 2022 at [OMITTED] Mr Avneet Lal 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:
- (a) Failed to ensure that conduits were solar protected to prevent failure due to UV damage; and/or
 - (b) Failed to ensure that conduits were terminated in fittings.

Fifth Alleged Disciplinary Offence:

10. Between 8 and 10 April 2022 at [OMITTED] Mr Avneet Lal 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:
- (a) Failed to ensure the circuit could handle the extra load from newly installed heat pump, resulting in the circuit protection circuit breaker operating.

In breach of regulation 59(2) of the Electricity (Safety) Regulations 2010.

Or in the Alternative

11. Between 8 and 10 April 2022 at [OMITTED] Mr Avneet Lal 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:
- (a) Failed to ensure the circuit could handle the extra load from newly installed heat pump, resulting in the circuit protection circuit breaker operating.

Sixth Alleged Disciplinary Offence:

12. Between 8 and 10 April 2022 at [OMITTED] Mr Avneet Lal has carried out prescribed electrical work outside the limits of his registration being an offence under section 143(d) of the Act, IN THAT, he carried out general prescribed electrical work by installing TPS cabling and isolators for new heat pumps, while registered as an Electrical Service Technician.

Seventh Alleged Disciplinary Offence:

13. Between 8 and 10 April 2022 at [OMITTED] Mr Avneet Lal has employed, directed, or permitted unauthorised persons to carry out prescribed electrical work being an offence under section 143(g) of the Act, IN THAT, he employed Vimleshwar Singh and Kunal Parkash to carry out Prescribed Electrical Work in breach of section 74 of the Act.

- [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.

Evidence

- [9] 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.

- [10] The Investigator’s case was that the Respondent had carried out non-compliant prescribed electrical work in relation to the installation of multiple heat pumps at a property. The Respondent’s defence was that whilst he installed heat pumps, he did not carry out any of the prescribed electrical work and that authorised persons in his employ did. The non-compliance of the electrical work was not in issue. The question

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

for the Board to decide was whether the Respondent was responsible for the non-compliant work.

- [11] The Investigator called one of the electrical workers who was, at the time, employed by the Respondent. He accepted that he and another electrician, Richard Hexton, had carried out prescribed electrical work on some but not all of the heat pumps. The heat pumps that he accepted he had worked on were those that did not have any compliance issues.
- [12] There was no direct evidence linking the Respondent to the non-compliant prescribed electrical work. The Complainant was not able to identify the Respondent as having carried out any prescribed electrical work on the site. No other witnesses were called that identified the Respondent as having carried out any prescribed electrical work. The Investigator did not call Mr Hexton. The Investigator's case relied on the contractual arrangement with the Respondent's company and the absence of any other electrical worker accepting that they had done the work.
- [13] The Respondent maintained that he was aware of the limits of his licence and that he had instructed the authorised employees in his Masterton branch to complete the prescribed electrical work.
- [14] The Respondent was not able to provide any business records to assist with his defence. He stated that this was because of issues with his systems and records.

Board's Decision

- [15] The Board has decided that the Respondent **has not** committed a disciplinary offence.
- [16] The Board decided that the Investigator had not proven, on the balance of probabilities, that the Respondent had carried out any prescribed electrical work.
- [17] When matters come before the Board, the Investigator, as the prosecutor, has the burden of proving the allegations. In respect of disciplinary matters, the relevant authority as regards the burden of proof is *Z v Dental Complaints Assessment Committee*,⁵ 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

⁵ [2009] 1 NZLR 1

natural tendency to require stronger evidence before being satisfied to the balance of probabilities standard.

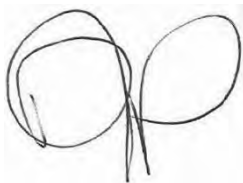
[105] The natural tendency to require stronger evidence is not a legal proposition and should not be elevated to one. It simply reflects the reality of what judges do when considering the nature and quality of the evidence in deciding whether an issue has been resolved to “the reasonable satisfaction 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.

- [18] Applying the above, the Board found that there was insufficient evidence before it to link the Respondent to the prescribed electrical work complaint about.

Right of Appeal

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

Signed and dated this Tuesday, 19 December 2023.



R Keys
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.