

Before the Electrical Workers Registration Board

CE No. 22132

Electrical Worker: Mohammed Nazeem (the Respondent)

Registration Number: E 250205

Electrical Worker Number: EW 109516

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: Auckland

Hearing Type: In Person

Hearing Date: 17 December 2019

Decision Date: 06 January 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: Martin Denyer for the Investigator
Matthew Orange for the Respondent

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(a)(i) 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 offences the Investigator reported should be considered by the Board. They were:

First Alleged Disciplinary Offence

- 1. On or around 1 October 2018 to 23 December 2018 at [REDACTED] [REDACTED] Mr Mohammed Nazeem 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:
 - (a) failed to install junction boxes for the connection of downlights; and/or
 - (b) failed to install sufficient residual current devices (RCD’s).

Or in the Alternative

- 2. On or around 1 October 2018 to 23 December 2018 at [REDACTED] [REDACTED] Mr Mohammed Nazeem 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 install junction boxes for the connection of downlights; and/or
 - (b) Failed to install sufficient RCD’s.

Or in the Alternative

3. On or around 1 October 2018 to 23 December 2018 at [REDACTED] [REDACTED] Mr Mohammed Nazeem 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 install junction boxes for the connection of downlights; and/or

(b) Failed to install sufficient RCD's.

In breach of Regulations 13(3) and 59(1) of the Electricity (Safety) Regulations 2010.

[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.

[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.

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

- [9] Counsel for the Investigator did not pursue the allegations under section 143(b)(ii) of the Act at the hearing. The matter proceeded on the basis that alternatives under sections 143(a)(i) and 143(a)(ii) of the Act were left open to the Board

Evidence

- [10] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁴. The Board notes that 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, the director of Xclusive Electrical and Air Conditioning Limited undertook prescribed electrical work which included checking existing wiring, installing new down lights, installing new power points and installing a heat pump. Partway through the installation the number of fittings to be installed increased requiring additional circuits to be installed. The existing switchboard was considered to be an inadequate and an upgrade to increase capacity was planned but not carried out by the Respondent as the homeowner engaged another electrician to finish the project whilst the Respondent was on holiday.
- [12] The Investigator engaged Mr Stephen Doust, an Electrical Inspector, to carry out an inspection of the installation, review the file and provide a report. Mr Doust's report put forward an opinion that the Respondent had failed to provide junction boxes at the connection point of the down light to the fixed wiring. He noted the lights had been connected using connector strip and insulation tape which breached clause 3.7.2.8(b) of AS/NZS 3000:2007.
- [13] The Respondent's position was that he installed about five downlights on a temporary basis to allow the customer to decide on the appearance and that the temporary installs resulted in the design change requiring the extra circuits. The Agreed Statement of Facts noted that the Respondent had installed and livened the lights with the intention of completing the project upon his return from holiday. He accepted that he installed and livened downlights without junction boxes during ongoing construction and that the work was non-compliant.
- [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 summary.

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

Board's Conclusion and Reasoning

- [15] The Board has decided that the Respondent **has** carried out or caused to be carried out prescribed electrical work in a negligent manner being an offence under section 143(a)(i) of the Act, IN THAT, he failed to install junction boxes for the connection of downlights as required by AS/NZS 3000.
- [16] The Board reached its decision on the basis of the Agreed Statement Facts and the Respondent's acceptance that he had carried out prescribed electrical work in a noncompliant manner.
- [17] There is a hierarchy to the alternatives that were before the Board in that it needs to first consider whether the prescribed electrical work was contrary to an enactment. If the Board finds in the affirmative it then needs to consider whether the conduct reaches the threshold for a finding of negligence or incompetence.
- [18] Contrary to an enactment is a form of strict liability offence in that all that need be proven is that the relevant enactment has been breached – in the instance the Electricity (Safety) Regulations 2010 or any of the cited standards within Schedule 2 of the Regulations. The Board does not need to find that there was intention, fault or negligence⁵. In this respect the provisions of Regulation 11 are noted:

11 Strict liability offences

- (1) *Subclauses (2) and (3) apply to every offence in these regulations except those that specifically refer to a defendant's state of knowledge or intention regarding the facts constituting the offence.*
- (2) *In a prosecution for an offence to which this subclause applies, it is not necessary for the prosecution to prove that the defendant knew or intended the facts that constitute the offence.*

- [19] In this respect regulation 59 of the Safety Regulations requires that the prescribed electrical work had to be carried out in accordance with the provisions of AS/NZS 3000. There was accepted evidence that AS/NZS 3000 had been contravened. A breach of section 143(a)(ii) has therefore been established.
- [20] Turning to negligence it 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*⁶ test of negligence which has
- [21] The New Zealand Courts have stated that 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.

⁵ *Blewman v Wilkinson* [1979] 2 NZLR 208

⁶ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

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

The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.

[22] 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 Act⁸. 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.

[23] The Board notes that the purposes of the Act are:

1A Purposes

The purposes of this Act are—

- (a) *to provide for the regulation, supply, and use of electricity in New Zealand; and*
- (b) *Repealed.*
- (c) *to protect the health and safety of members of the public in connection with the supply and use of electricity in New Zealand; and*
- (d) *to promote the prevention of damage to property in connection with the supply and use of electricity in New Zealand; and*
- (da) *to provide for the regulation of fittings and electrical appliances that are, or may be, exported pursuant to an international trade instrument; and*
- (e) *to provide for the regulation of electrical workers.]*

[24] The Board also notes, as regards acceptable standards, that all prescribed electrical work must comply with the Safety Regulations 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.

[25] 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.

[26] Turing to the facts before the Board luminaries had been installed using connector strips and insulation tape. Section 3.7.2 of AS/NZS 3000:2007 deals with connection methods. Clause 3.7.2.8 provides that joints in flexible cords may be made in

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

accordance with the requirements of clauses 3.7.2.2 to 3.7.2.7 or by means of a suitable cable coupler. The Respondent used the second option, a cable coupler. The coupler he used was not suitable for a temporary or a permanent connection.

[27] If a cable coupler is used, then AS/NZS 3000:2017 goes on to stipulate that:

Connections between a flexible cord and installation wiring shall be made in a purpose made device containing suitable screwed or crimped terminals.

Any flexible cord shall be installed so that undue stress on its connections because of a pull on the cord is alleviated by a pillar, post, grip, tortuous path, or other effective means. Knotting of the flexible cord shall not be acceptable for this purpose.

[28] The device used, a connector strip, was not a purpose made device. It did not achieve the requirements in the second paragraph above.

[29] The work was described as temporary. It was done so as to allow the homeowners to make an informed decision. The issue was that it was left connected and in an unsafe state. It should have either been made permanent with an acceptable means of connection or disconnected until such time as a complaint connection could be made. As neither step was taken the Board, which includes persons with extensive knowledge and expertise in the electrical industry, considered the Respondent had been negligent in that he had displayed a lack of reasonably expected care. The Board also considered that the negligence was sufficiently serious enough to warrant a disciplinary outcome. In making that determination the Board noted that whilst the Respondent considered that the work was temporary he knowingly left in that manner when he went on holiday.

Penalty, Costs and Publication

[30] 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.

[31] Counsel for the Respondent made submissions at the hearing as regards penalty, costs and publication. The Board also questioned the Respondent with regards to matters pertinent to those matters.

Penalty

[32] 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*¹¹ commented on the role of "punishment" in giving penalty orders stating that punitive orders are, at times,

¹¹ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

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.

- [33] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*¹² 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 to considering any aggravating and/or mitigating factors. The same applies to disciplinary proceedings under the Electricity Act.
- [34] Both Counsel for the investigator and for the Respondent noted the Respondent's cooperation with the investigation and his acceptance of his failings. Counsel for the Respondent submitted that no further action was required given the cooperation and the toll the investigation had taken on the Respondent.
- [35] The Board noted the Respondent's submissions. It also noted the need for deterrence and decided that a fine was the appropriate form of penalty to be imposed. The Board adopted a starting point of a fine of \$1,000 based on the seriousness of the matter and the fines that the Board has imposed for similar disciplinary offending in the past. It applied a 50% reduction to recognise the cooperation and plea. The fine ordered is \$500.

Costs

- [36] 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.
- [37] 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 case¹³.
- [38] In *Collie v Nursing Council of New Zealand*¹⁴ 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.

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

¹³ *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.

¹⁴ [2001] NZAR 74

[39] Based on the above the Board's costs order is that the Respondent is pay the sum of \$150 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

[40] 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 Act¹⁵. 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.

[41] 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.

[42] Within New Zealand there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990¹⁶. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction¹⁷. Within the disciplinary hearing jurisdiction the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive¹⁸. 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*¹⁹.

[43] 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 interest²⁰. 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.

[44] Based on the above the Board will not order further publication.

[45] The Respondent should also note that the Board has not made any form of order under section 153(3) of the Act which allows for prohibition of publication.

Penalty, Costs and Publication Orders

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

¹⁵ Refer sections 128 of the Act

¹⁶ Section 14 of the Act

¹⁷ Refer sections 200 and 202 of the Criminal Procedure Act

¹⁸ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

¹⁹ *ibid*

²⁰ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Penalty: Pursuant to section 147M(1)(f) of the Electricity Act 1992, the Respondent is ordered to pay a fine of \$500.

Costs: Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$150 (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.

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 not be named in the publication.

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

[47] 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

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

Signed and dated this 6th day of January 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):
- (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.

