

Before the Electrical Workers Registration Board

CE No. 22309

Electrical Worker: Hong Tae Park (the Respondent)
Registration Number: EAS 254175
Electrical Worker Number: EW 114144
Registration Class: Electrical Appliance Serviceperson

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 and Decision Date: 18 March 2021

Board Members Present:

Mel Orange (Presiding)
Michael Macklin, Registered Inspector
Jane Davel, Lay Member
Russell Keys, Registered Inspector
Ashley Yan, Registered Electrical Engineer
Martin Perry, Registered Electrician

Appearances: Ms S Blick 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(d) of the Act.

Contents

Summary of the Board’s Decision	2
Introduction	2
Function of Disciplinary Action	3
Procedure	4
Evidence	4
Board’s Conclusion and Reasoning	5
Penalty, Costs and Publication	6
Penalty	6
Costs.....	7
Publication	7
Penalty, Costs and Publication Orders	8
Right of Appeal	9

Summary of the Board’s Decision

- [1] The Respondent has carried out prescribed electrical work that was outside of the limits of his registration and licence. He is ordered to undertake a course of instruction.

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 24 June 2020 at [omitted] Mr Hong Park 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 failed to connect a free standing cooking appliance (range) to the electrical installation wiring using a socket outlet or by an installation coupler in breach of regulation 59(1) of the Electricity (Safety) Regulations 2010 and clause 4.7.2 of AS/NZS 3000:2007.

Or in the Alternative

2. On or around 24 June 2020 at [omitted] Mr Hong Park 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 failed to connect a free standing cooking appliance (range) to the electrical installation wiring using a socket outlet or by an installation coupler.

Or in the Alternative

3. On or around 24 June 2020 at [omitted] Mr Hong Park 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 connect a free standing cooking appliance (range) to the electrical installation wiring using a socket outlet or by an installation coupler.

Second Alleged Disciplinary Offence

4. On or around 24 June 2020 at [omitted] Mr Hong Park has done prescribed electrical work that, under the terms of any restriction or limitation that applies to the prescribed electrical work that the person may do, the person is not authorised to do being an offence under section 143(d) of the Act, IN THAT, he carried out prescribed electrical work outside the limits of his registration being the disconnection and reconnection of conductors to a cooking appliance (range).

[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.”

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

- [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 its decision.
- [12] The Agreed Statement of Facts set out that the Respondent was, at the material times, registered and licensed as an Electrical Appliance Serviceperson (EAS), which authorised him to undertake the maintenance, testing, certification of electrical appliances provided that the electrical rating is not greater than 250 volts and that they are supplied by a plug and flexible cord.
- [13] The Respondent, the owner-operator of NZ Digital Box Limited, a company that offers services and repairs whiteware and appliances, was engaged to remove an old oven range and install a free-standing range. The range had been advertised for sale by the Respondent as second-hand and refurbished. The advertisement included the installation and connection of the range in the sale price.
- [14] The Respondent disconnected the old range and connected the replacement range directly into the existing terminals. As an EAS the Respondent was not authorised to undertake the disconnections of conductors from the existing range or the reconnection of conductors to the refurbished range. The Respondent stated that he had anticipated an electrician that he normally uses assisting him with the oven range installation but instead undertook the electrical work himself.
- [15] An Electrical Inspector appointed to review the work by the Investigator noted that the range had been connected with the existing TPS cable from the wall without the use of a plug and a socket or by an installation coupler. In his opinion, that was a breach of AS/NZS 3000:2007 4.7.2 and Electricity (Safety) Regulations 2010 Reg. 59(1).

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

- [16] The Respondent accepted that he had carried out non-compliant prescribed electrical work when he failed to connect a free standing cooking appliance (range) to the electrical installation wiring using a socket outlet or by an installation coupler at the Property. He also accepted that he had carried out prescribed electrical work outside the limits of his registration and licence, being the disconnection and reconnection of conductors to a cooking appliance (range) at the Property.
- [17] 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

- [18] The Board has decided that the Respondent **has not** committed the first alleged disciplinary offence.
- [19] The Board noted that there is an exception to regulation 59(1) under which the charge had been brought that was available to the Respondent. Regulation 59(3) states:

59 Low and extra-low voltage installations to comply with AS/NZS 3000

(3) *A low voltage or extra-low voltage installation or part installation may be maintained or replaced in all or any of the following ways:*

- (a) *in such a way that the installation or part installation complies with Part 1 or Part 2 of AS/NZS 3000:*
- (b) *in such a way that the installation or part installation is restored to, or maintained in, its original condition:*
- (c) *by complying with all manufacturer's instructions relating to the fittings used in, or affected by, the maintenance or replacement.*

- [20] The Board considered that regulation 59(3)(b) applied. The existing range was directly connected to conductors. That was the installations original condition. It was restored to that condition. Regulation 59(1) has not, therefore, been breached as the exception applied.
- [21] The Board has also decided that the Respondent **has** done prescribed electrical work that, under the terms of any restriction or limitation that applies to the prescribed electrical work that the person may do, the person is not authorised to do being an offence under section 143(d) of the Act, in that, he carried out prescribed electrical work outside the limits of his registration being the disconnection and reconnection of conductors to a cooking appliance (range).
- [22] Section 84 of the Act allows the Board to designate classes of registration and to specify for each of those classes the prescribed electrical work that a person is

authorised to do. The Board does so by way of Gazette Notices. The applicable Gazette Notice specifies the limits for a person holding registration as an EAS. Those limits are that the Respondent may carry out maintenance, testing, certification of electrical appliances provided that the electrical rating is not greater than 250 volts and that they are supplied by a plug and flexible cord.

- [23] The prescribed electrical work carried out by the Respondent included the installation and connection of conductors used in an installation. As an EAS he was not authorised to carry out such work. As such, he has worked outside of the limits of his registration and licence.

Penalty, Costs and Publication

- [24] 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.
- [25] The Respondent made submissions at the hearing as regards penalty, costs and publication.

Penalty

- [26] 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.

- [27] 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.
- [28] The Board noted that the Respondent had paid for remediation and that he is in constrained financial circumstances. It also noted that the Respondent would benefit

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

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

from a course of instruction on the limits of work that apply to him and on the electrical standards that apply to the work that he undertakes.

- [29] Based on the above, the Board decided to impose a course of instruction under section 147M(1)(e) and 147M(2)(c) of the Act. The course to be undertaken is to be with a person who is acceptable to the Board, it is not to be less than four hours in duration, and is to focus on the Respondent's limits of registration and on AS/NZS 5761. It is to be completed within three months of this decision being issued and at the Respondent's cost. The Respondent will be required to prove completion by providing the Registrar with a report from the course provider.

Costs

- [30] 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.
- [31] 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.
- [32] 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.

- [33] The Board decided that, as the Respondent will have to pay the costs of the course of instruction imposed the Board, it would not order that he pay any costs.

Publication

- [34] 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 Act⁹. 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.

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

⁹ Refer sections 128 of the Act

- [35] 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.
- [36] 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 guidance as to the types of factors to be taken into consideration in *N v Professional Conduct Committee of Medical Council*¹³.
- [37] 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.
- [38] Based on the above, the Board will publish a general article in the Electron summarising the matter but will not order further publication. The Respondent will not be identified in the Electron.

Penalty, Costs and Publication Orders

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

Penalty: Pursuant to section 147M(1)(e) and 147M(2)(c) of the Electricity Act 1992, the Respondent is ordered to undertake a course of instruction with a person who is acceptable to the Board. The course of instruction is to:

- (a) be not to be less than four hours in duration;
- (b) focus on the Respondent's limits of registration and on AS/NZS 5761;
- (c) be completed within three months of this decision being issued;
- (d) be at the Respondent's cost and

The Respondent must prove satisfactory completion by providing the Registrar with a report from the course provider stating that he has completed the course to the provider's satisfaction.

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

¹³ *ibid*

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

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.

[40] 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

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

Signed and dated this 29th day of March 2021



M 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.