

**Before the Electrical Workers Registration Board**

CE No. 22659, 22660 and 22662

**In the matter of:**

A disciplinary hearing before the Electrical Workers Registration Board

**Between:**

The Ministry of Business Innovation and Employment

**And**

Anesh Prasad a registered and licensed electrical worker (I 262866, EW 108024, Inspector) (the Respondent)

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**Decision of the Board in Respect of the Conduct of an Electrical Worker  
Under section 147G and 147M of the Electricity Act 1992**

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Hearing Location:

Auckland

Hearing Type:

In Person or On the Papers

Hearing Date:

28 July 2023

Board Members Present:

Mr R Keys, Registered Inspector (Presiding)

Ms J Davel, Lay Member

Ms A Yan, Registered Electrical Engineer

Mr M Orange, Barrister

**Appearances:**

M Denyer and B Colville for the Investigator

N Chandler (Industry Representative) 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 proceedings are stayed. No further action will be taken.

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## Contents

|  |   |
|--|---|
| <b>Summary of the Board's Decision</b> ..... | 2 |
| <b>The Board</b> .....                       | 2 |
| <b>Introduction</b> .....                    | 2 |
| <b>Interim Suspension</b> .....              | 3 |
| <b>The Hearing</b> .....                     | 3 |
| <b>Stay of Proceedings</b> .....             | 3 |
| <b>Interim Suspension Lifted</b> .....       | 5 |
| <b>Right of Appeal</b> .....                 | 5 |

### Summary of the Board's Decision

[1] The proceedings are stayed. No further action will be taken.

### The Board

[2] The Board is a statutory body established under the Electricity Act.<sup>1</sup> Its functions include hearing complaints about and disciplining persons to whom Part 11 of the Act.

### Introduction

[3] 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<sup>2</sup> that the complaint should be considered by the Board. Under section 147T of the Act, the Investigator must prosecute the matter at a Board hearing who may be represented by counsel.

[4] The Respondent was served with three Notices of Proceeding, one for each complaint that had been made. In summary, they were:

CE22659: 13 allegations that the Respondent had provided false or misleading returns with respect to prescribed electrical work that he inspected;

CE22660: one allegation that the Respondent had provided false or misleading returns with respect to prescribed electrical work that he inspected;

CE22662: one allegation that the Respondent had provided false or misleading returns with respect to prescribed electrical work that he inspected.

[5] Matters CE22660 and CE22662 related to the same property and the same conduct. Two complaints had been made about the same matter, and rather than proceeding with a single matter, the Investigator alleged the same offence twice over.

[6] Prior to the hearing, the Investigator advised that he would not be presenting any evidence with respect to the CE22559 matter, and he advised the Respondent that

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<sup>1</sup> Section 148 of the Act.

<sup>2</sup> Under section 145 of the Act, an Investigator is appointed by the Chief Executive of the Ministry

the matter would not be pursued by the Investigator. The Board was, in essence, left with one charge of providing a false or misleading return.

### **Interim Suspension**

[7] When the complaints were first made, the Registrar recommended that the Board consider suspending the Respondent's licence pending the outcome of the respective investigations. On 2 February 2023, an interim suspension was imposed. Following a hearing about the interim suspension held on 16 February 2023, the interim suspension remained in place. The Respondent's licence has been suspended since then.

### **The Hearing**

[8] The hearing was opened. Counsel for the Investigator and the Investigator also appeared. Counsel had advised that two witnesses would be called, one of whom was an expert that had provided an opinion that the Investigator would rely on. The expert did not attend, and it was ascertained that he would not be attending because he had another commitment.

[9] The Respondent appeared with his industry representative and was ready to proceed. The industry representative intended to give opinion evidence in response to the Investigator's expert.

[10] The remaining issue before the Board was technical in nature. To make a decision, the Board would have to hear from both experts.

[11] Given the non-attendance of the Investigator's expert, the Board had to consider whether the hearing should be adjourned. The Board also sought submissions on whether, in the circumstances, a stay of the proceedings should be ordered.

### **Stay of Proceedings**

[12] A stay of proceedings can be granted to prevent an abuse of process. This can occur where it would offend the tribunal's sense of justice and propriety to continue proceedings in the particular circumstances of the case<sup>3</sup>. In *Beckham v R* the Court of Appeal emphasised that a high threshold applies<sup>4</sup>.

[13] Looking first at the question of whether the Board can issue a stay, Clause 11 of Schedule 3 of the Act stipulates that the Board can regulate its own procedure. The High Court has held that similar disciplinary tribunals have what is described as an inherent jurisdiction and that such orders can be made.<sup>5</sup> In *Orlov v National Standards Committee 1*,<sup>6</sup> the High Court noted:

*[29] Parliament has provided that the Tribunal is free to set its own procedure. Obviously it must do so in a way that is consistent with the discharge*

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<sup>3</sup> Refer *Fox v Attorney-General* [2002] 3 NZLR 62(CA) and *Beckham v R* [2012] NZCA 603

<sup>4</sup> Page 47

<sup>5</sup> *Castles v Standards Committee No.3* [2013] NZHC 2289

<sup>6</sup> [2013] NZHC 1955

*of its statutory functions and does not cut across any express statutory or regulatory provisions. Subject to those constraints, the Tribunal has been given a high degree of procedural flexibility in the exercise of its important statutory functions.*

- [14] Looking at the functions of the Board, they are set out in section 149 of the Act. Included are:
- (l) *to hear complaints about, and to discipline, persons to whom Part 11 applies:*
  - (o) *to exercise and perform any other functions, duties, and powers as are conferred or imposed on the Board by or under this Act or by or under any other enactment:*
  - (p) *to do any other things as may, in the Board's opinion, be necessary for the effective administration of this Act:*
  - (q) *to carry out any functions that are incidental and related to, or consequential on, its functions stated in this section.*
- [15] Sections 149(o) to (q) are wide in their scope and application, and, given the above, the Board considers that it does have the jurisdiction to consider whether a stay of proceedings should be issued and that to do so would not cut across any statutory or regulatory provisions.
- [16] Turning to the legal tests that apply, in *Moevao v Department of Labour*,<sup>7</sup> the Court of Appeal held that relevant factors included whether the proceedings were vexatious and oppressive<sup>8</sup>, the principle of fair treatment<sup>9</sup>, and public confidence in the due administration of justice.<sup>10</sup>
- [17] The current proceedings could be described as oppressive, and the Board considers that fair treatment of the Respondent requires that a stay be issued.
- [18] Firstly, the Respondent's licence has been suspended since early February 2023. The suspension was imposed on the basis of three complaints, one of which involved multiple properties and is now not being pursued. The impact of the interim suspension on the Respondent has been significant.
- [19] Secondly, as noted, only one matter is now being pursued by the Investigator, and, with respect to that matter, Counsel for the Investigator has conceded that what was to be pursued at the hearing was less serious than what was originally alleged.
- [20] Finally, the Board noted that the Respondent has, since the interim suspension was imposed, voluntarily undertaken training to address matters that were alleged.

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<sup>7</sup> [1980] 1 NZLR 464

<sup>8</sup> Richmond P. at page 470

<sup>9</sup> Woodhouse J. at page 476

<sup>10</sup> Richardson J. page 478

- [21] Taking the above into consideration, the Board decided that a stay was warranted. No further steps will be taken in relation to the allegations.
- [22] There will not be a record of the matter on the Register.
- [23] It should be noted that a stay means that the Board will not be taking any further steps with regard to the present matter. It does not mean that the Board has made any findings as regards the allegations.

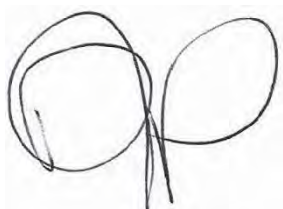
### **Interim Suspension Lifted**

- [24] When an interim suspension is imposed, under 147I(3) of the Act, it remains in place and is effective until such time as:
- (a) it is revoked by the Board; or
  - (b) the complaint laid under the Act into the matter is dealt with in accordance with section 147M of the Act.
- [25] Because of the stay, the matter will not be dealt with in accordance with section 147M of the Act. As such, the Board has decided that it will revoke the interim suspension with immediate effect.

### **Right of Appeal**

- [26] The right to appeal Board decisions is provided for in sections 147ZA and 147ZB of the Act<sup>i</sup>.

Signed and dated this 4<sup>th</sup> day of August 2023



**R Keys**  
Presiding Member

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### **<sup>i</sup> 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.*