

**Before the Electrical Workers Registration Board**

CE No. 22564

**In the matter of:**

A disciplinary hearing before the Electrical Workers Registration Board

**Between:**

The Ministry of Business Innovation and Employment

**And**

Jeffery Wetini Reid, a registered and licensed electrical worker (E 11875, EW064714, Electrician) (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:

Wellington

Hearing Type:

In Person

Hearing Dates:

15 February 2023 and 21 June 2023

Decision Date:

21 June 2023

Board Members Present:

Mr R Keys, Registered Inspector (Presiding)

Ms J Davel, Lay Member

Ms M Kershaw, Registered Electrician

Ms A Yan, Registered Electrical Engineer

Mr M Perry, Registered Electrician

Mr M Orange, Barrister

**Appearances:**

R Hill and M Jones 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.

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### Summary of the Board’s Decision

- [1] The Investigator did not establish to the required standard of proof (balance of probabilities) that the Respondent had committed the First Alleged Disciplinary Offence. The matter complained about with respect to the Second Alleged Disciplinary offence did not reach the threshold for them to be dealt with as a disciplinary matter. Accordingly, the Board found that the Respondent had not committed a disciplinary offence.

### 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 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 29 January 2022 at [OMITTED], Wellington, Mr Jeffery Reid 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:

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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

- a. Failed to provide protection against mechanical damage to the main earth cable and conductor; and/or
- b. Failed to ensure that the joints in the earthing system were mechanically secure, protected and fastened to avoid failure to the termination

In breach of regulations 20 (2) (d) and (g) and 21 (5) of the Electricity (Safety) Regulations 2010.

Or in the Alternative

2. On or around 29 January 2022 at [OMITTED], Wellington, Mr Jeffery Reid 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 provide protection against mechanical damage to the main earth cable and conductor; and/or
  - b. Failed to ensure that the joints in the earthing system were mechanically secure, protected and fastened to avoid failure to the termination.

#### **Second Alleged Disciplinary Offence**

3. On or around 29 January 2022 at [OMITTED], Wellington, Mr Jeffery Reid has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he:
  - a. Falsely certified the prescribed electrical work as being lawful, when this work did not comply with mandatory requirements pertaining to protection; and/or
  - b. Did not complete all required information in the electrical safety certificate.

[5] 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.

[6] No Board Members declared any conflicts of interest in relation to the matters under consideration.

#### **Function of Disciplinary Action**

[7] 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*<sup>3</sup> and in New Zealand in *Dentice v Valuers Registration Board*<sup>4</sup>.

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<sup>3</sup> *R v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1, 19 January 2011.

<sup>4</sup> [1992] 1 NZLR 720 at p 724

- [8] 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*,<sup>5</sup> 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.”*

- [9] 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.

### **The Complaint**

- [10] The complaint that was originally made was an allegation that the Complainant’s neighbour had positioned an earth stake on the Complainant’s land and that the neighbour, who was not an electrical worker, had illegally carried out prescribed electrical work and that the work may have been completed in a non-compliant manner. The Complainant and the neighbour were embroiled in an ongoing dispute about access to a landlocked plot and boundary encroachments.
- [11] The Investigator ascertained that a licensed electrician had carried out the work. A complaint was raised about that electrical worker (the Respondent). A desktop review of the evidence provided with the original complaint was made by Mr Olsen, an Electrical Inspector. His findings formed the basis of the allegations in the Notice of Proceeding.

### **The Investigator’s Case**

- [12] The Investigator’s case was that the Respondent had, when he installed a new earth peg, failed to provide protection against mechanical damage to the main earth cable and conductor and to ensure that the joints in the earthing system were mechanically secure, protected and fastened to avoid failure. On the basis of that allegation, the Investigator also alleged that the certification issued was false or misleading and that the Electrical Safety Certificate issued did not contain all the required information.
- [13] The Investigator relied on evidence provided by the Complainant, including photographs taken of a conductor that were not adequately secured or protected throughout the entirety of its path. Photographs were provided by both the Complainant and a contractor that the Complainant engaged to build a boundary fence that abutted the neighbour’s property and a deck and stairs that encroached the boundary.

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<sup>5</sup> [2016] HZHC 2276 at para 164

- [14] The Respondent also provided photographs and gave evidence, supported by an employee, that the conductors were adequately secured under the deck when he carried out the work and that the earth peg that he had installed. He stated that a person or persons had interfered with the conductor after it was installed and that he believed the photographs of the conductor lying on the ground with building debris on top of it were staged.
- [15] The Respondent's photographs also showed that the earth peg had been dug around to install the boundary fence. He stated that the earth peg and conductors had been interfered with and damaged after they had been installed and that he had been called back to repair it as a result. The fencing contractor denied any interference with the peg or conductor and noted the safety risks of doing so.

### **Evidence and Burden of Proof**

- [16] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed<sup>6</sup>. 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.*

- [17] With respect to the standard of proof, in *Z v Dental Complaints Assessment Committee*,<sup>7</sup> 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 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*

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<sup>6</sup> *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

<sup>7</sup> [2009] 1 NZLR 1

*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] The burden of proof lies with the Investigator, who, under section 147T of the Act, must prosecute complaints at hearings before the Board.

#### **Board's Conclusion and Reasoning**

- [19] The Board decided that the Respondent **has not** committed the alleged disciplinary offences.
- [20] With respect to the First Alleged Disciplinary Offence, the Board finds that the Investigator has not proven, on the balance of probabilities, that the Respondent did install the conductor in an unsafe or non-compliant manner when it was originally installed. In coming to that decision, the Board took into consideration that it was possible that other persons may have interfered with the conductor after it had been installed.
- [21] In terms of the Second Alleged Disciplinary Offence, the prescribed electrical work that was carried out was low-risk work. This was because it fell within the definitions in regulation 6A(1) of the Regulations and the provisions in regulation 6A(2). They provide:

**6A Meaning of low-risk, high-risk, and general prescribed electrical work**

- (1) *In these regulations, low-risk prescribed electrical work—*
- (a) *means prescribed electrical work that comprises the maintenance or replacement of a fitting in an existing installation; and*
  - (b) *includes relocation or extension of a conductor to facilitate replacement of a fitting; but*
  - (c) *excludes maintenance that involves the adjustment of protection or gas monitor settings of mining electrical equipment.*
- (2) *In these regulations, high-risk prescribed electrical work means the prescribed electrical work (not being low-risk prescribed electrical work)*

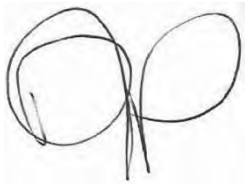
- [22] As it was low-risk work, there was no legal requirement for a Certificate of Compliance to be issued, as one is only required for general and high-risk prescribed electrical work. Further, as the Board has not upheld the first charge, it follows that the second charge, as regards the Certificate of Compliance being false or misleading, fails.

[23] That leaves the Electrical Safety Certificate as the only certification that the second charge could relate to. Again, for the same reasons, it was not misleading. It was missing one date, but that was a trivial item and not one that warrants a disciplinary outcome.

### **Right of Appeal**

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

Signed and dated this 13<sup>th</sup> day of July 2023

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a series of loops and a vertical line extending downwards.

**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.