

## Before the Electrical Workers Registration Board

CE No. 22630

**In the matter of:**

A disciplinary hearing before the Electrical Workers Registration Board

**Between:**

The Ministry of Business Innovation and Employment

**And**

Simon Rihari a registered and licensed electrical worker (EASQ 264768, EW 123484, Electrical Appliance Serviceperson Endorsed) (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

Hearing and Decision Date:

18 October 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:

J Hilario 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 allegation was that the Respondent had failed to provide an Electrical Safety Certificate (ESC) on completion of prescribed electrical work (PEW). The facts before the Board showed that the PEW was not connected to a live supply. As such, the Board decided that the Respondent had not committed the disciplinary offence as the Respondent as the legislative provision relied on, regulation 74C of the Safety Regulations, stipulates that an ESC must be as soon as practicable after that part installation is connected to a power supply on the basis that the part installation was not connected.

### 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 offence the Investigator reported should be considered by the Board. It was that:
- On or around 11 June 2022 at [OMITTED], Auckland, Mr Simon Rihari has failed to provide a return being an offence under section 143(f) of the Act, IN THAT, he failed to issue an Electrical Safety Certificate within 20 days of the work being connected to the supply.
- [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*<sup>1</sup> and in New Zealand in *Dentice v Valuers Registration Board*<sup>2</sup>.

### Procedure

- [7] The matter proceeded on the basis of an Agreed Statement of Facts.
- [8] The Board noted that the Agreed Statement of Facts set out that the prescribed electrical work (PEW) under investigation was not connected to a live electrical supply as a result of a faulty miniature circuit breaker (MCB) that needed to be attended to. The charge, however, stated that the PEW was “connected to the supply”.
- [9] The provision of the Safety Regulations relied on is regulation 74C, which states:

**74C Time when electrical safety certificate to be issued**

*A person who issues an electrical safety certificate for an installation or part installation on which prescribed electrical work has been done (other than referred to in regulation 74B) must do so as soon as practicable after the installation or part installation is connected to a power supply, but in any case no later than 20 working days after connection.*

- [10] The phrase “connected to a power supply” is not defined in the Act or the Safety Regulations.
- [11] The Board put it to the Investigator and the Counsel for the Investigator that a critical element of the charge may not have been established, notwithstanding that the Respondent had accepted the allegation. They were given an opportunity to confer and make submissions.
- [12] In raising the matter, the Board was mindful of the requirement to comply with the rules of natural justice<sup>3</sup> and that the Respondent, who was not represented, may have been at a disadvantage.
- [13] Counsel for the Investigator submitted that because the appliance (an oven) was connected to a conductor that, in turn, was connected to the MCB, there was the potential for it to become live once the MCB was returned to service.

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

<sup>2</sup> [1992] 1 NZLR 720 at p 724

<sup>3</sup> Section 156 of the Act

- [14] The Respondent submitted that because he could not live the conductor and appliance, he was not able to complete all of the tests mandated in AS/NZS 3000 to establish and certify that the PEW was safe and that he could not, therefore, issue an ESC and that if he had, he would have been issuing a false or misleading document.
- [15] The Board concurred with the Respondent's submission and decided that, as the PEW had not been connected to a power supply, the alleged disciplinary offence had not been committed. In short, at the time, there was no obligation to provide an ESC.
- [16] In making its decision, the Board took into consideration the provisions of regulation 73A of the Safety Regulations, which state:

**73A Before connecting installations to power supply**

- (1) *Before connecting to a power supply a low or extra-low voltage installation or part installation on which prescribed electrical work has been done, the person doing the connection must—*
- (a) *be satisfied that the installation or part installation is safe to connect; and*
- (b) *be satisfied that the testing required by these regulations has been done*

- [17] In terms of testing, Section 82 of the Act states:

**82 Testing, certification, and inspection**

- (1) *If any prescribed electrical work is carried out, that work or, as the case may require, the works or electrical installation or electrical appliance in respect of which that work is carried out must not be connected to a power supply unless the testing, certification, and inspection that is required by regulations has been carried out.*

- [18] The two legislative provisions make it clear that "connected to a power supply" means that the conductor and appliance are live. Live is a defined term. The Safety Regulations defines it as:

*live means charged with electricity so that a difference in voltage exists to earth or between conductors*

- [19] Put another way, the act of connecting is the final step to allow electricity to flow. In this matter, that would have been when the MCB was repaired or replaced. Further, with regard to the repair or replacement of the MCB, the electrical worker who carried out that repair would have an obligation to test and certify, and that certification would include any appliances and fittings downstream of it, including any socket outlets.

### **Leave to Amend**

- [20] Counsel for the Respondent sought leave to amend the charge.
- [21] Under section 156A of the Act, the Board can amend or revoke a notice.
- [22] Before considering the application, the Board needs to consider whether granting leave would be fair. In this respect, section 156 of the Act states: "... the Board and every investigator must observe the rules of natural justice".
- [23] The principles of natural justice require that the investigation and hearing are conducted in a manner that ensures the Respondent is given a fair opportunity to be heard and contradict the evidence and to ensure the decision-making process is conducted fairly, transparently and in good faith. In terms of a fair hearing, the Respondent must be given an opportunity to respond to an allegation which, with adequate notice, might be effectively refuted.
- [24] In terms of natural justice, the Board needs to consider whether granting the application would amount to an abuse. An abuse of process can arise in circumstances where it would offend the Court's sense of justice and propriety to try the accused in the particular circumstances of the case<sup>4</sup>. In *Beckham v R*, the Court of Appeal emphasised that a high threshold applies<sup>5</sup>. In *Moevao v Department of Labour*,<sup>6</sup> the Court of Appeal held that relevant factors included whether the proceedings were vexatious and oppressive,<sup>7</sup> the principle of fair treatment,<sup>8</sup> and public confidence in the due administration of justice.<sup>9</sup>
- [25] The complaint in this matter was made on 2 August 2022. It was investigated, an expert opinion was obtained, and the charge was laid with the benefit of that opinion. The allegation itself was minor in nature, and the Investigator did not pursue any allegations that the PEW had been carried out in a non-compliant manner.
- [26] Given those factors, the Board decided that it would not grant leave as to do so may have been an abuse. Had the matters complained about been more serious, then the Board may have considered granting leave. However, given the minor nature of the charges, the time that has elapsed and that the Respondent has had to endure the ordeal of disciplinary proceedings, the Board considered it would not be fair to allow them to continue.

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

- [27] On the basis of the above, the Board decided that the Respondent had not committed a disciplinary offence.

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<sup>4</sup> Refer *Fox v Attorney-General* [2002] 3 NZLR 62(CA) and *Beckham v R* [2012] NZCA 603

<sup>5</sup> Page 47

<sup>6</sup> [1980] 1 NZLR 464

<sup>7</sup> Richmond P. at page 470

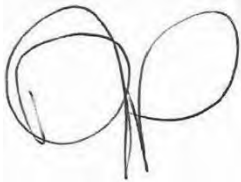
<sup>8</sup> Woodhouse J. at page 476

<sup>9</sup> Richardson J. page 478

## Right of Appeal

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

Signed and dated this 2<sup>nd</sup> day of November 2023

A handwritten signature in black ink, consisting of several loops and a vertical stroke, appearing to read 'R Keys'.

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.