

Before the Electrical Workers Registration Board

CE No. 22405
Electrical Worker: Gary Rossouw (the Respondent)
Registration Number: E 253305
Electrical Worker Number: EW 114517
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 and Decision Date: 18 May 2022

Board Members Present:

Mel Orange (Presiding)
Michael Macklin, Registered Inspector
Monica Kershaw, Registered Electrician
Jane Davel, Lay Member
Russell Keys, Registered Inspector
Martin Perry, Registered Electrician

Appearances: Mr M Denyer 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 disciplinary offences under sections 143(a)(i) and 143(f) of the Act.

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Summary of the Board’s Decision

- [1] The Respondent carried out prescribed electrical work in a negligent manner contrary to section 143(a)(i) of the Act and provided a false or misleading return contrary to section 143(f) of the Act. He is fined \$2,000 and ordered to pay costs of \$1,125. The disciplinary offences will be recorded on the Public Register for a period of three years and will be published in the Electron.

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 of Hearing setting out the alleged disciplinary offences the Investigator reported should be considered by the Board. They were:

First Alleged Disciplinary Offence

1. Between 23 August and 21 November 2019 at [OMITTED], Mr Gary Rossouw 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 provide a means of isolation for wiring and fittings supplying lighting system and components; and/or
- (b) failed to provide residual current device (RCD) protection for new socket outlets in upstairs bathroom.

Or in the Alternative

- 2. Between 23 August and 21 November 2019 at [OMITTED], Mr Gary Rossouw 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 a means of isolation for wiring and fittings supplying lighting system and components and/or
 - (b) Failed to provide RCD protection for new socket outlets in upstairs bathroom.

Second Alleged Disciplinary Offence

- 3. On or around 26 November 2019 at 106 [OMITTED], Mr Gary Rossouw has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT he certified and provided a certificate of compliance when some work was non-compliant.

- [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

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

maintained in order to protect clients, the profession and the broader community.”

- [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.

Background to the Hearing

- [9] The Respondent was sent a copy of the complaint and was asked to provide a response. His response was:

I confirm receipt of the complaint and wish to respond as follows:

I strongly refute the allegations that I have committed disciplinary offences as referred to in the MBIE letter dated 12th March 2021, items (a), (b) and (f).

This complaint is vexatious or at least frivolous. The complainant’s allegations are peppered with lies are unfounded, and defamatory.

Please find attached a copy of the COC which was left on the complainant’s kitchen workbench back in 2019.

- [10] The Respondent did not provide any evidence or submissions as regards his allegation that the complaint was vexatious and frivolous. The Board did not consider that the complaint was either vexatious or frivolous.
- [11] As noted above, the Respondent was served with a Notice of Proceeding, which set out the allegations the Investigator was pursuing. A prehearing conference was scheduled. The Respondent did not attend. He was sent a copy of the minutes from the conference. He responded on 8 February 2022, attaching what he called a “Notice” and an “Unrebutted affidavit of Truth”. The notice stated:

i, a living soul, :gary-sydney-charles: of the family Rossouw, has come to learn that the New Zealand Government trades as a corporation known as HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND (the corporation) on the U.S. Securities and Exchange Commission;

i :gary-sydney-charles: have no recollection of entering into a contract with the corporation and therefore do not consent to the jurisdiction of the Electrical Workers Registration Board, a subsidiary of the corporation;

i :gary-sydney-charles: a living soul, do not consent to these proceedings unless proof in the form of a witnessed contract with my wet ink signature can be furnished by signed courier post by 4:00pm on Friday 11th February 2022;

Please find attached an unrebutted affidavit as notice of my standing, including a fee schedule for any breach of my claims, statements, assertions and facts contained therein;

[12] The Respondent was then served with a Notice of Hearing. He responded by stating:

To Mr M Orange acting as Presiding Member of the Electrical Workers Registration Board, Take notice; i, :gary-sydney-charles: of the family Rossouw and a living soul (not a legal fiction or straw man) decline the offer of a hearing of the EWRB;

i refer you to my previous email correspondence dated 8th February 2022 and draw your attention to the fee schedule attached to the unrebutted affidavit;

i do hereby request the Bond Surety Number of Mr M Orange acting as Presiding Member of the Electrical Workers Registration Board;

Yours sincerely,

:gary-sydney-charles:

All rights reserved

Non waived

[13] The Respondent did not appear at the hearing. The Board was satisfied that he had been given and received the notices required under the Act. The matter proceeded.

Evidence

[14] 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.

[15] The Board received signed briefs of evidence from the Complainant and Mr Mark Carter, an Electrical Inspector engaged by the Investigator as an expert.

[16] The Complainant's brief outlined the prescribed electrical work that the Respondent undertook, and it detailed that he was provided with an Electrical Safety Certificate ("ESC") and Certificate of Compliance ("COC") for the work by the Respondent. The Complainant set out that he experienced issues with the work following its completion, that the Respondent returned to carry out repairs and that he received further certification following its completion. The Complainant continued to have issues with the prescribed electrical work that the Respondent had carried out. He called another electrician to assess the issues and made a complaint to the Board. No rectification work was carried out.

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

[17] Mr Carter visited the property and provided the Investigator with a report. He noted the following non-compliance issues and related breaches of electrical standards:

- (a) *There was a failure to provide a recognisable form of isolation to a section of LED lighting. AS/NZS 3000:2007: 2.3.2.2.1(f), 2.3.5.1, 2.3.5.3*
- (b) *There was a failure to provide additional RCD protection to additional socket outlets installed. AS/NZS 3000:2007: 6.2.4.2(c), Figure 6.7, 2.6.3.4*

[18] Mr Carter also provided his opinion that the certification provided by the Respondent for the initial work completed by him was false or misleading.

[19] The Complainant, who was present at the hearing, noted his frustrations in trying to get the Respondent to return and attend to the issues he had complained about.

Board's Conclusion and Reasoning

[20] The Board has decided that the Respondent has 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 provide:

- (a) a means of isolation for wiring and fittings supplying lighting system and components; and
- (b) residual current device (RCD) protection for new socket outlets in a bathroom.

[21] The Board also decided that the Respondent provided a false or misleading return being an offence under section 143(f) of the Act, in that he certified and provided a certificate of compliance when some work was non-compliant.

[22] The reasons for the Board's decisions follow.

Jurisdiction

[23] The Respondent, in his correspondence to the Board, has claimed the Board has no jurisdiction.

[24] The Respondent was first registered as an electrical worker on 18 June 2009. To become an electrical worker, the Respondent would have had to make an application and have met the registration requirements set out in the Act.

[25] The Respondent's first licence authorising him to carry out prescribed electrical work as an Electrician was granted on 19 June 2009. He relicensed on 1 July 2010 and has relicensed every two years since. His most recent licence was granted for a further two years on 1 July 2021. In order to relicense, the Respondent has to make an application, pay a fee and have met the statutory requirements to be issued with a new license, including the requirement to complete a Board directed Competency Programme every two years.

[26] The fact that the Respondent has obtained registration and licencing under the Act so that he could legally carry out prescribed electrical work shows that, since 2009, he has, of his own volition, agreed to come within the provisions of the Act. He sought to take advantage of and enjoy a legal authority to carry out presented electrical work. In doing so, he also made himself the subject of the disciplinary provisions in the Act. He cannot, now that he has been complained about, simply state that the Board has no jurisdiction on the basis of what is a legal nonsense and a fiction. The Sovereign Citizen claims and statements put forward by the Respondent have no bearing on the Board's functions or its legal jurisdiction to hear and determine a complaint about him. The Respondent is a registered electrical worker and, as such, he comes within the Board's jurisdiction.

Negligence

[27] The charges put before the Board were laid in the alternatives of negligence or incompetence under section 143(a)(i) of the Act and contrary to an enactment under section 143(a)(ii) of the Act.

[28] There is a hierarchy to the disciplinary charges in that the Board needs to first consider whether the prescribed electrical work was carried out or caused to be carried out in a manner that 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.

[29] Contrary to an enactment is a form of strict liability offence in that all that has to 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.*

[30] Turning to negligence and/or incompetence, there are no statutory definitions of the terms. It is noted, however, that they are not the same. In *Beattie v Far North Council*⁶ Judge McElrea noted:

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

⁶ Judge McElrea, DC Whangarei, CIV-2011-088-313

[43] Section 317 of the Act uses the phrase “in a negligent or incompetent manner”, so it is clear that those adjectives cannot be treated as synonymous.

- [31] Negligence is considered to be 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*⁷ test of negligence which has been adopted by the New Zealand Courts⁸.
- [32] Incompetence is a lack of ability, skill or knowledge to carry out or supervise prescribed electrical work to an acceptable standard. *Beattie* put it as “*a demonstrated lack of the reasonably expected ability or skill level*”. In *Ali v Kumar and Others*,⁹ it was stated as “*an inability to do the job*”.
- [33] The New Zealand Courts have stated that an assessment of negligence and/or incompetence in a disciplinary context is a two-stage test¹⁰. The first is for the Board to consider whether the practitioner has departed from the acceptable standard of conduct of a professional. The second is to consider whether the departure is significant enough to warrant a disciplinary sanction.
- [34] 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 Act¹¹. 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 practitioner¹².
- [35] 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*

⁷ *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582

⁸ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

⁹ *Ali v Kumar and Others* [2017] NZDC 23582 at [30]

¹⁰ *Martin v Director of Proceedings* [2010] NZAR 333 (HC), *F v Medical Practitioners Disciplinary Tribunal* [2005] 3 NZLR 774 (CA)

¹¹ *Martin v Director of Proceedings* [2010] NZAR 333 at p.33

¹² *McKenzie v Medical Practitioners Disciplinary Tribunal* [2004] NZAR 47 at p.71

- (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.]*

[36] The Board also notes, as regards acceptable standards, that all prescribed electrical work must comply with the Electricity (Safety) Regulation 2010 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.

[37] Turning to seriousness in *Collie v Nursing Council of New Zealand*,¹³ 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.

[38] The Board received evidence of prescribed electrical work that was not compliant. The evidence was not challenged. The two compliance issues were a failure to provide a means of isolation for wiring and fittings supplying lighting system and components and a failure to provide residual current device (RCD) protection for new socket outlets in a bathroom. The Investigator's Expert, Mr Carter, identified the provisions of AS/NZs 3000:2007 that had been breached in respect of each failing.

[39] Under regulation 59 of the Safety Regulations, all prescribed electrical work on a low voltage domestic installation must be installed, tested, inspected, and connected so as to comply with Part 2 of AS/NZS 3000. As the Respondent's prescribed electrical work had not been completed in accordance with provisions of AS/NZS 3000, it follows that he has completed prescribed electrical work in a manner that was contrary to an enactment.

[40] It is further noted that under regulation 20 of the Safety Regulations, the prescribed electrical work is deemed to be unsafe because of the following provisions:

Failure to provide an RCD:

20 *Electrically unsafe works and installations*

- (1) *Works and installations are deemed to be electrically unsafe if there are not measures in place that do at least 1 of the following:*

¹³ [2001] NZAR 74

- (a) *prevent accidental direct or indirect contact with exposed fittings or exposed conductive parts of the works or installations:*
- (b) *provide for the automatic interruption of the power supply to the works or installations on the occurrence of a fault that would cause injury or damage to any person or property:*
- (c) *prevent an electric current passing through the body of a person on contact with any part of the works or installations, or limit that current so that the magnitude and duration of the shock current cannot exceed the IEC shock current standards.*

Failure to provide a means of isolation:

- (2) *Works and installations are also deemed to be electrically unsafe if—*
 - (fc) *in the case of a domestic installation, any safety or security function of the installation that needs electricity to operate has no manual override in the event of an interruption in the supply of electricity;*

[41] The Respondent's failings were fundamental. The requirements for isolation and for RCDs are well known, and any competent electrical worker would be aware of them. The Board was not able to question the Respondent as to his competence and understanding of the regulatory requirements imposed under AS/NZS 3000. It has, accordingly, taken the position that the Respondent knew what was required but chose to complete the prescribed electrical work in the manner that he did. As such, the Board finds that the Respondent has departed from the reasonably expected standard of conduct for an Electrician. Furthermore, given the fundamental nature of the failings, the Board has decided that the conduct was serious enough to warrant a disciplinary outcome.

Certification

- [42] The charge under section 143(f) of the Act related to the provision of a false or misleading return. In determining whether a return is false or misleading is a question of fact to be decided objectively, and the intention of the issuer is irrelevant¹⁴.
- [43] The return referred to was a Certificate of Compliance. It is issued under the Safety Regulations when high and general risk prescribed electrical work is carried out. It must state that the prescribed electrical work has been done lawfully and safely and that the information in the certificate is correct.

¹⁴ *Taylor Bros Ltd v Taylor Group Ltd* [1988] 2 NZLR 1

- [44] As the Board has found that the Respondent completed prescribed electrical work in a non-compliant manner, it follows that the certification was false or misleading.

Penalty, Costs and Publication

- [45] 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.
- [46] The Board heard evidence during the hearing relevant to penalty, costs and publication and has decided to make a decision on the appropriate orders to be made.

Penalty

- [47] 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*¹⁵ 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.

- [48] The Board also notes that in *Lochhead v Ministry of Business Innovation and Employment*,¹⁶ 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.
- [49] The disciplinary offending was at the lower end. The Board adopted a starting point of a fine of \$1,500. This is the Respondent’s second disciplinary offence. The Board disciplined the Respondent in 2018.¹⁷ In that matter, the Board fined the Respondent \$1,500. The fact that this is his second offence is an aggravating factor. The fine is increased, accordingly, to \$2,000. There are no mitigating factors.

¹⁵ HC Auckland CIV-2007-404-1818, 13 August 2007 at p 27

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

¹⁷ *Rossouw* [2018] EWRB 1934

Costs

- [50] 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.
- [51] 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 case¹⁸.
- [52] In *Collie v Nursing Council of New Zealand*,¹⁹ 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.*
- [53] In *Kenneth Michael Daniels v Complaints Committee 2 of the Wellington District Law Society*,²⁰ the High Court noted:
- [46] *All cases referred to in Cooray were medical cases and the Judge was careful to note that the 50 per cent was the general approach that the Medical Council took. We do not accept that if there was any such approach, it is necessarily to be taken in proceedings involving other disciplinary bodies. Much will depend upon the time involved, actual expenses incurred, attitude of the practitioner bearing in mind that whilst the cost of a disciplinary action by a professional body must be something of a burden imposed upon its members, those members should not be expected to bear too large a measure where a practitioner is shown to be guilty of serious misconduct.*
- [47] *Costs orders made in proceedings involving law practitioners are not to be determined by any mathematical approach. In some cases 50 per cent will be too high, in others insufficient.*
- [54] The Board has adopted an approach to costs that uses a scale based on 50% of the average costs of different categories of hearings, simple, moderate and complex. The current matter was not complex. Adjustments based on the High Court decisions above are then made.
- [55] The manner in which a licensed person responds to a disciplinary complaint and conducts their defence can also be taken into consideration by the Board. In *Daniels v Complaints Committee*²¹ the High Court held that it was permissible to take into account as an adverse factor when determining penalty, that the practitioner had

¹⁸ *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.

¹⁹ [2001] NZAR 74

²⁰ CIV-2011-485-000227 8 August 2011

²¹ [2011] 3 NZLR 850.

responded to the complaints and discipline process in a belligerent way. The Respondent has not cooperated and has put forward spurious defences, which he has not substantiated. Notwithstanding, the Board has not imposed a higher than usual order for costs.

- [56] The Board's scale of costs for a matter of this nature is \$1,125. The costs are set at that amount.

Publication

- [57] 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 Act²². 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.
- [58] 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.
- [59] Within New Zealand, there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990²³. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction²⁴. Within the disciplinary hearing jurisdiction, the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive²⁵. 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*²⁶.
- [60] 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 interest²⁷. 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.
- [61] Based on the above, the Board will order further publication. A summary of the matter will be published in the Electron. The Respondent will be named in that publication.

²² Refer sections 128 of the Act

²³ Section 14 of the Act

²⁴ Refer sections 200 and 202 of the Criminal Procedure Act

²⁵ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

²⁶ *ibid*

²⁷ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Penalty, Costs and Publication Orders

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

Penalty: Pursuant to section 147M(1)(f) of the Electricity Act 1992, the Respondent is ordered to pay a fine of \$2,000.

Costs: Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$1,125 (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.

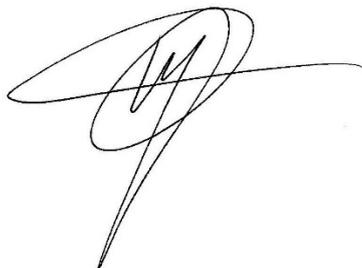
A summary of the matter will be published by way of an article in the Electron which will focus on the lessons to be learnt from the case. The Respondent will be named in the publication.

[63] The Respondent should note that the Board may refuse to relicense an electrical worker who has not paid any fine or costs imposed on them.

Right of Appeal

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

Signed and dated this sixteenth day of Juen 2022.



Mr 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.*