

Before the Electrical Workers Registration Board

CE No. 22127
Electrical Worker: Prem Singh (the Respondent)
Registration Number: E242978
Electrical Worker Number: EW 087483
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 Date: 17 December 2019
Decision Date: 06 January 2020

Board Members Present:

Mel Orange (Presiding)
Michael Macklin, Registered Inspector
Monica Kershaw, Registered Electrician
Mac McIntyre, Registered Electrician
Jane Davel, Lay Member
Russell Keys, Registered Inspector
Ashley Yan, Registered Electrical Engineer

Appearances: Rebecca Denmead 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.

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Introduction

- [1] The hearing resulted from a complaint from 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.
- [2] The Respondent was served with a notice setting out the alleged disciplinary offences the Investigator reported should be considered by the Board. The charges were:

First Alleged Disciplinary Offence

1. On or around 26 January 2019 at [REDACTED], Mr Prem Singh has carried out or caused to be carried out prescribed electrical work in a negligent manner being an offence under section 143(a)(i) of the Act, IN THAT, he supervised prescribed electrical work (PEW) while his practising licence was suspended.

Second Alleged Disciplinary Offence

2. On or around 26 January 2019 at [REDACTED], Mr Prem Singh 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 has carried out the supervision of PEW while his practising licence was suspended.

In the alternative

3. On or around 26 January 2019 at [REDACTED] Mr Prem Singh has employed, directed, or permitted any unauthorised person to do any prescribed electrical work being an offence under section 143(g) of the Act, IN THAT, he has directed an un-authorised person to carry out prescribed electrical work.

[3] 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.

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

Procedure

[5] The Respondent did not engage in the investigation process. He did not respond to the complaint. He did not participate in a prehearing conference. He did not advise whether he would attend the hearing. He was served with the required documents and notices.

[6] On the basis that the Respondent had not engaged in the process a direction was given that the matter would proceed by way of a formal proof hearing. Affidavits from the Investigator's witnesses were filed on that basis.

[7] The Respondent appeared at the hearing. The Investigator's witnesses were not present. The Respondent was asked if he objected to them not being present or if he required their attendance for the purposes of cross examination. He advised that he did not object or require their attendance.

[8] The matter proceeded as a defended hearing.

[9] It was noted that whilst the Investigator was pursuing two disciplinary offences, one of which had two alternatives, that the First and Second allegations effectively dealt with the same allegations. Counsel for the Investigator accepted that what was before the Board was three alternative charges in respect of a single allegation.

Function of Disciplinary Action

[10] 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.

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

- [11] 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.”

- [12] 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.

Evidence

- [13] 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.

- [14] The Board received the sworn affidavits and heard evidence from the Respondent.
- [15] The matter related to an allegation that the Respondent supervised prescribed electrical work at a time when he not authorised to do so. The allegation arose as a result of a complaint about the Respondent failing to complete all of the prescribed electrical work that he had been contracted to do by the Complainant in the matter. The Investigator’s position was that the contracted work was carried out by a person under the supervision of the Respondent and at a time when the Respondent’s practising licence had been suspended by the Board.
- [16] The Respondent submitted that he was not aware of the suspension and that he did not carry out or supervise any prescribed electrical work. His position was that he only sold fittings to the Complainant and that the person who carried out the prescribed electrical work noted in the complaint had no connection to him. His evidence was that the person identified by the Complainant was a person connected to the complainant, not him. He further stated that the work that was to be carried out pursuant to his arrangement with the Complainant was going to be done under the supervision of an electrical worker that he contacts. He described the person as an Electrical Inspector.

³ [2016] HZHC 2276 at para 164

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

Suspension

- [17] The Board was provided with affidavit evidence which set out that the Respondent's practising licence was suspended by the Board on 12 December 2018 under section 147I of the Act. On 8 January 2019 the Respondent rang the Board's contact centre asking for information on how he could get the suspension lifted.
- [18] The prescribed electrical work that the Respondent allegedly supervised was carried out on or about 26 January 2019.
- [19] The Respondent gave evidence that he did not, on 26 January 2019, know his licence had been suspended.
- [20] The Board rejected the Respondent's evidence. It was clear from the Respondent's own inquiries on how he could regain his licence that he knew of the suspension.
- [21] The Board also notes that its decision to suspend, which was in writing, clearly set out the reason for the suspension, the Respondent's rights with respect to it, and the consequences if he continued to carry out or supervise prescribed electrical work.

Supervision

- [22] The Complainant also provided an affidavit as did her husband. The affidavits noted that the Respondent was engaged to replace existing light fittings with LED fittings. A Fijian person on a visitor permit, who was under the supervision of the Respondent, was witnessed removing existing fittings and replaced them with new fittings including lighting in the lounge, dining area, three bedrooms and a toilet. The Respondent was present for about half an hour and then left the worker to carry on the work on his own. The Respondent later returned and instructed the worker on where to place a light in a hallway.
- [23] When the Respondent failed to return and complete the work a dispute arose. The Board was provided with copies of text communications with the Respondent. The text messages indicated that prescribed electrical work was being carried out at the Respondent's direction.
- [24] The Respondent stated he only supplied fittings and that if prescribed electrical work was to be completed it would have been done under the supervision of an Electrical Inspector that he contracted from time to time. He said he had used this person for eight years. He was not sure of the person's full name but provided his cell phone number. A check of the Register of Electrical Workers identified the person as [REDACTED]. [REDACTED] gained registration and was licensed as an Electrician on 16 January 2013. His practising licence expired on 30 June 2015. It was not renewed. He has not been licensed since. He is not, as an unlicensed person, able to carry out or supervise prescribed electrical work.
- [25] The Board noted the inconsistencies between the Respondent's evidence and that provided in the affidavits before it. The Board rejected the Respondent's evidence.

Board's Conclusion and Reasoning

- [26] The Board has decided that the Respondent **has** breached section 143(d) of the Act by supervising prescribed while his practising licence was suspended which was a lawful restriction and limitation on his practising licence.
- [27] The Board decided that the disciplinary offence under section 143(d) of the Act was the most appropriate of the alternatives available. It most accurately described the behaviour under investigation.
- [28] The Board made the decision on the basis that it accepted the evidence of Investigator's witnesses that a person under the supervision of the Respondent did carry out prescribed electrical work at a time when the Respondent's licence had been suspended.
- [29] In terms of a restriction or limitation it is to be noted that section 111(2) of the Act states:

If a person's practising licence is suspended, the person—

- (a) *is not the holder of a current practising licence, for the class of registration concerned, for the period during which the licence is suspended; and*
- (b) *is not authorised to do, or assist in doing, work under that licence for the period during which the licence is suspended.*

- [30] Given this provision the suspension ordered by the Board clearly imposed a restriction and limitation on the Respondent's licence. Notwithstanding he knowingly supervised prescribed electrical work.

Penalty, Costs and Publication

- [31] Having found that one or more of the grounds in section 143 applies the Board must, under section 147M of the Actⁱ, consider the appropriate disciplinary penalty, whether the Respondent should be ordered to pay any costs and whether the decision should be published.
- [32] Both Counsel for the Investigator and the Respondent made submissions at the hearing as regards penalty, costs and publication.

Penalty

- [33] 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:

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

[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.

- [34] 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 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.
- [35] Counsel for the Investigator noted that it was an aggravating factor that the Respondent has shown disregard for the Board's orders and that the Respondent has appeared multiple time before the Board in respect of disciplinary matters.
- [36] The Respondent's licence and registration was cancelled on 23 July 2019 as a result of disciplinary action⁷. The Board's decision at the time was that the Respondent could not apply to be relicensed or re-registered for a period of 12 months. As a consequence, the Respondent is no longer a licensed or registered person. He was, however, registered at the time of the offending and as such he does come within the Board's jurisdiction.
- [37] The Respondent submitted that he needed his registration and licence so as to earn an income. He noted he was in a poor financial position and suffered from poor health. He stated he had made payments towards previous Board orders. An inquiry with the Ministry of Business Innovation and Employment ascertained that he had not.
- [38] Noting the disregard for previous orders and the inability to pay a fine the Board decided that a further period of cancellation was not only the only viable option but was also warranted as a disciplinary penalty. In making this decision the Board took into account the comments in *Hart* and in *Dorbu v New Zealand Law Society (No 2)*⁸ where the High Court stated:

[35] The principles to be applied were not in issue before us, so we can briefly state some settled propositions. The question posed by the legislation is whether, by reason of his or her conduct, the person accused is not a fit and proper person to be a practitioner. Professional misconduct having been established, the overall question is whether the practitioner's conduct, viewed overall, warranted striking off. The Tribunal must consider both the risk of reoffending and the need to maintain the reputation and standards of the legal profession. It must also consider whether a lesser penalty will suffice. The Court recognises that the Tribunal is normally best placed to assess the

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

⁷ Refer Singh [2019] EWRB 21809 and Singh [2019] EWRB 21810

⁸ [2012] NZAR 481

seriousness of the practitioner's offending. Wilful and calculated dishonesty normally justifies striking off. So too does a practitioner's decision to knowingly swear a false affidavit. Finally, personal mitigating factors may play a less significant role than they do in sentencing.

- [39] Given the above the Board will cancel the Respondent's registration and licence and order that he may not apply to be relicensed for a period of twelve (12) months. The order will take effect immediately. The effect is that his registration and licence is now cancelled through until 17 December 2020.
- [40] As has been previously pointed out to the Respondent he should note that if and when he does reapply to be registered and licensed, he will be required to satisfy the Board of his competence and that he meets the Board's fit and proper person criteria.
- [41] The Respondent is also reminded that as he is no longer registered and licensed should note that if he continues to carry out, supervise, employ or direct persons to carry out prescribed electrical work that he will be committing an offence under the Electricity Act and that he may face prosecution for such conduct in the District Court.

Costs

- [42] 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.
- [43] 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 case⁹.
- [44] In *Collie v Nursing Council of New Zealand*¹⁰ 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.*
- [45] The Board notes that 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*¹¹ the High Court held that it was permissible to take into account as an adverse factor when determining penalty that the practitioner had responded to the complaints and discipline process in a belligerent way.

⁹ *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.

¹⁰ [2001] NZAR 74

¹¹ [2011] 3 NZLR 850.

[46] Based on the above the Board's costs order is that the Respondent is pay the sum of \$2,000 toward the costs of and incidental to the matter.

Publication

[47] 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 Act¹². 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.

[48] 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.

[49] Within New Zealand there is a principle of open justice and open reporting which is enshrined in the Bill of Rights Act 1990¹³. The Criminal Procedure Act 2011 sets out grounds for suppression within the criminal jurisdiction¹⁴. Within the disciplinary hearing jurisdiction the courts have stated that the provisions in the Criminal Procedure Act do not apply but can be instructive¹⁵. 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*¹⁶.

[50] 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 interest¹⁷. 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.

[51] Based on the above the Board will order further publication by way of an Electron Article and such other public notices that the Board considers necessary to ensure the public are informed that the Respondent is no longer authorised to carry out prescribed electrical work.

Penalty, Costs and Publication Orders

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

¹² Refer sections 128 of the Act

¹³ Section 14 of the Act

¹⁴ Refer sections 200 and 202 of the Criminal Procedure Act

¹⁵ *N v Professional Conduct Committee of Medical Council* [2014] NZAR 350

¹⁶ *ibid*

¹⁷ *Kewene v Professional Conduct Committee of the Dental Council* [2013] NZAR 1055

Penalty: Pursuant to section 147M(1)(a)(i) of the Electricity Act 1992, the Respondent's registration and practising licence are cancelled and pursuant to section 147M(1)(a)(iii) the Respondent may not apply to be re-registered or re-licensed before the expiry of twelve (12) months.

Costs: Pursuant to section 147N of the Act, the Respondent is ordered to pay costs of \$2,000 (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.

In terms of section 147Z of the Act, there will be action taken to publicly notify the Board's action.

[53] 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

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

Signed and dated this 6th day of January 2020



Mel 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:*

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- (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—

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- (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.*