

Before the Electrical Workers Registration Board

CE No. 22576

In the matter of:

A disciplinary hearing before the Electrical Workers Registration Board

Between:

The Ministry of Business Innovation and Employment

And

Kimhak Sun a registered and licensed electrical worker (EE282585, EW 145982, Electrical Engineer) (the Respondent)

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:

19 April 2023

Board Members Present:

Mr R Keys, Registered Inspector(Presiding)

Ms J Davel, Lay Member

Ms M Kershaw, Registered Electrician

Mr M Macklin, Registered Inspector

Ms A Yan, Registered Electrical Engineer

Mr M Perry, Registered Electrician

Mr M Orange, Barrister

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.

Contents

Summary of the Board’s Decision	2
Introduction	2
Function of Disciplinary Action	3
Evidence	4
Discussion	4
Board Decision	6
Right of Appeal	6

Summary of the Board’s Decision

- [1] The Investigator failed to prove the charges. Respondent has not committed a disciplinary offence.

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 notice¹ 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 15 and 16 March 2022 at [OMITTED], Mr Kimhak Sun 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 failed to carry out a physical disconnection of a three phase sub-circuit cable from the switchboard, leaving bare conductors exposed and able to be livened in breach of regulations 13(1), 20(1), and 59(2) of the Electricity (Safety) Regulations 2010.

Or in the Alternative

2. On or around 15 and 16 March 2022 at [OMITTED], Mr Kimhak Sun 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 failed to carry out a physical disconnection of a three phase sub-circuit cable from the switchboard, leaving bare conductors exposed and able to be livened.

¹ The Investigator sought and was granted leave to amend the charges. An amended Notice of Proceeding was issued.

Or in the Alternative

3. On or around 15 and 16 March 2022 at [OMITTED], Mr Kimhak Sun has negligently created a risk of serious harm to any person, or a risk of significant property damage, through having carried out or caused to be carried out prescribed electrical work being an offence under section 143(b)(ii) of the Act, IN THAT, he failed to carry out a physical disconnection of a three phase sub-circuit cable from the switchboard, leaving bare conductors exposed and able to be livened.

Second Alleged Disciplinary Offence

4. On or around 15 and 16 March 2022 at [OMITTED], Mr Kimhak Sun has provided a false or misleading return being an offence under section 143(f) of the Act, IN THAT, he falsely certified the prescribed electrical work as being lawful, when this work was unfinished and was not carried out lawfully and safely.

- [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.
- [6] At the commencement of the hearing, Counsel for the Investigator sought leave to amend the Second Alleged Disciplinary Offence to reflect the date on which the certification was completed. Counsel noted that the Certificate of Compliance that the charge related to was dated 1 April 2022, not 15 and 16 March 2022, which were the dates on which the work was carried out. The Board can amend a notice,² provided that doing so would not prejudice the Respondent. The Board was satisfied that the error in the Amended Notice of Proceeding was technical in nature, that the charge in that Notice gave adequate notice of what was being investigated, and that the Respondent would not be prejudiced by the change. The charge was amended accordingly.

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*³ and in New Zealand in *Dentice v Valuers Registration Board*⁴.

² Section 156A of the Act.

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

⁴ [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*,⁵ 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.

Evidence

- [10] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁶. 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.

- [11] The burden of proving a disciplinary offence has been committed sits with the Investigator.

Discussion

- [12] The complaint was made by the landlord of a commercial premise. The tenancy was coming to an end, and the exiting tenant engaged the Respondent to remove a distribution board in the tenancy (DB2). The Respondent’s evidence was that he turned the mini circuit breaker supplying DB2 off, locked the switch and placed a danger tag on it. He then removed the conductors supplying DB2 from the upstream switchboard, wrapped the conductors in white electrical tape, and proceeded to cut the conductors above DB2 to allow for its removal. The Respondent provided a photograph of his lock out and tag with a date timestamp which coincided with the date of the work. He stated that he tested as he carried out the work and was satisfied that the installation was safe. The Respondent’s written submissions that he provided to the Board and his answers to questions were cogent and consistent.
- [13] The work was carried out over the period 15 to 16 March 2022. The full scope of the intended work had not been completed, and intervening events meant that the Respondent was not able to return. As a result of this, he issued a Certificate of Compliance (CoC) on 1 April 2022, which stated, under the description of work:

⁵ [2016] HZHC 2276 at para 164

⁶ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1

Remove sub-distribution board 2 (DB2) and its electrical accessories such as cable, lights, power point sockets, switches.

Turn off incoming power supply MCB to DB2, lock&tag, proof test proof.

Note: job not finish, need to check, remove rest of cable in/on wall, roof and incoming cable, check old cable, it maybe live connecting from other switchboards and main switchboard (fuse) as it is very old. Fuse switchboard should be upgraded to MCB in future for more safety and protection for people and property.

- [14] The tenancy was vacated on 19 March 2022. The Complainant gave evidence that she changed the locks on that date and that no one had access to the premises until another electrical worker from [OMITTED] attended the site on 23 March 2023. That electrical worker ascertained that a three-phase conductor that had been supplying DB2 was live. He traced it back to the switchboard. His evidence was that the conductors feeding DB2 were connected, the switch was on, and there was no evidence of it having been locked and tagged. An employee of [OMITTED] (not the electrical worker who attended the site) raised a Gas/Electricity Installation Fault Notice. The Respondent was not aware of the Notice or the matters complained about until such time as he was served with the complaint in June 2022. Neither [OMITTED] nor the Landlord (Complainant) had sent a copy of it to him.
- [15] Given that the Respondent had no notice of the issues complained about, the Board finds that his CoC was issued on the basis of his understanding that he would not be returning and that the description in it, as regards the prescribed electrical work not being complete, did not result from him being informed that there was a live conductor or from the complaint.
- [16] The Respondent submitted that there was a period between when he carried out his work and when the locks were changed when others could have accessed the premises and reconnected the conductor. There was evidence in the complaint documentation that an attempt had been made to restore a power supply to an electric garage door. The Respondent maintained that the installation was safe when he left it on 16 March 2022. He also noted that the end of the conductor that was reported as being live was not in the position that he had left it in. His evidence was that it looked like it had been pulled down from its original position, indicating that someone else may have interfered with it. The Board considered this was, on the basis of the evidence before it, a possibility.
- [17] The Board was provided with scans of photographs (not the digital originals) of the MCB that the Respondent stated he had locked and tagged, which were taken at the time [OMITTED] attended the site. Counsel for the Investigator submitted that the photographs did not align with those provided by the Respondent of his lock and tag. His submission was that the Respondent's photograph was not a photograph of the installation complained about. The Respondent maintained it was, and the date stamp of his photograph aligned with when the work was carried out. The Board

noted that, given the quality of the photographs it was provided and the limited range of those photographs (they did not show, for example, the switchboard cover, which was important as the [OMITTED] photo may have been taken with the cover on), it was not possible to determine if there was an inconsistency between the two sets of photographs.

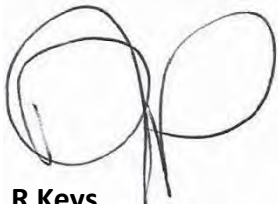
Board Decision

[18] The Board has decided that the Respondent **has not** committed a disciplinary offence. The Board has made its findings on the basis that the Investigator has not proven, on the balance of probabilities, that the Respondent has committed the alleged offences. In particular, the Respondent has presented evidence that he left the site in a safe state, and he provided certification which corroborated his assertions. That certification was not prompted by the complaint. There was no reason for the description that was provided to have been given other than it was an accurate depiction of what he had done and the state of the installation. Further, it is possible that others have reconnected the MCB after the Respondent disconnected it. For those reasons, the Board was not satisfied that the Respondent had left the conductor connected and live.

Right of Appeal

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

Signed and dated this 30th day of May 2023.

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

R Keys
Presiding Member

ⁱ **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.*