

Before the Electrical Workers Registration Board

CE No. 22531

In the matter of:

A disciplinary hearing before the Electrical Workers Registration Board

Between:

The Ministry of Business Innovation and Employment

And

Thomas Clive Wood a registered and licensed electrical worker (E 247929, EW 108750, Electrician) (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:

by audio-visual link

Hearing Type:

In Person

Hearing and Decision Date:

14 December 2022

Board Members Present:

Mr R Keys, Registered Inspector (Presiding)

Ms M Kershaw, Registered Electrician

Mr M Macklin, Registered Inspector

Ms J Davel, Lay Member

Ms A Yan, Registered Electrical Engineer

Appearances:

B Ropati 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 failed to establish that the disciplinary offence (as charged) had, on the balance of probabilities, been committed.

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 offences the Investigator reported should be considered by the Board. They were:

First Alleged Disciplinary Offence

1. On or around 1 September 2017 – 02 November 2020 at [OMITTED], Auckland, Mr Thomas Wood 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 the necessary visual inspection and testing of the main earth electrode and conductor as per AS/NZS3000:2007 section 8 in breach of regulations 59(2), 63(1)(b), and 73A(e)(iv) of the Electricity (Safety) Regulations 2010.

Or in the Alternative

2. On or around 1 September 2017 – 02 November 2020 at [OMITTED], Auckland, Mr Thomas Wood 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 the necessary visual inspection and testing of the main earth electrode and conductor as per AS/NZS3000:2007 section 8.

Second Alleged Disciplinary Offence

3. On or around 2 November 2020 at [OMITTED], Auckland, Mr Thomas Wood 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 did not comply with mandatory requirements pertaining to visual inspection and testing in breach of regulation 66(2)(a), (b) and (c) of the Electricity (Safety) Regulations 2010.

- [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 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.

Procedure

- [9] The matter proceeded on the basis of an Agreed Statement of Facts.

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

Evidence

[10] The Board must be satisfied on the balance of probabilities that the disciplinary offences alleged have been committed⁴. 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 Board heard from the Respondent prior to it making a decision.

[12] As noted, the matter proceeded on the basis of an Agreed Statement of Facts. The Statement set out that the Respondent's business was engaged to investigate and resolve issues with flickering and burnt-out halogen ceiling lights. Initially, some light fittings were replaced with LEDs, and eventually, a switchboard replacement was carried out. The work was certified by the Respondent. The allegation was that his employees had failed to carry out the necessary visual inspection and testing of the main earth electrode and conductor prior to the work being connected and certified.

[13] The Investigator engaged the services of an Electrical Inspector to review the complaint. He identified that the Respondent had breached regulations 59(2), 63(1)(b), 66(2)(a), (b) and (c) and 73A(e)(iv) of the Safety Regulations in that he failed to carry out the necessary visual inspection and testing of the main earth electrode and conductor as per AS/NZS3000:2007 section 8 and falsely certified the prescribed electrical work as being lawful when this work did not comply with mandatory requirements pertaining to visual inspection and testing.

[14] The general rule is that all facts in issue, or relevant to the issue in a case, must be proved by evidence. As the Investigator and Respondent agreed to the facts as outlined above, it was not necessary to call any further evidence or to test the evidence as outlined in the Statement.

[15] The Board received the full complaint file. It noted that the allegation related to an earth peg under a deck that was subsequently replaced. The Respondent's evidence was that he verified an earth both visually and by testing and that the earth he identified was not the earth peg that was under the deck. The presence of an adequate earth was consistent with the test results that were recorded by the Respondent.

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

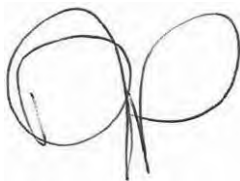
Board's Conclusion and Reasoning

- [16] The Board has decided that the Respondent **has not** committed a disciplinary offence.
- [17] The Board made its decision on the basis that the Investigator has failed to establish, on the balance of probabilities, that there was an earth electrode and conductor.
- [18] It is not uncommon for more than one earth to be present at a dwelling. The Respondent gave evidence that there was an earth, and his test results confirmed the same. The only evidence presented as regards the earth electrode and conductor was a photograph of an earth under a deck. No test results showing a lack of an earth were presented. On that basis, the Board decided that the charges had not been proven.

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 25th day of January 2023



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.