

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

AA 169/08  
5091231

BETWEEN                      AMIT SENGUPTA  
   Applicant  
  
AND                              UNIVERSITY of AUCKLAND  
   Respondent

Member of Authority:      James Wilson  
  
Representatives:            Donald Wackrow for the applicant  
   David France for the respondent  
  
Investigation Meeting:      12 December 2007  
  
Submissions received:      24 December 2007 from the applicant  
   25 January 2008 from the respondent  
  
Determination:              6 May 2008

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**DETERMINATION OF THE AUTHORITY**

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**Mr Sengupta's employment relationship problem**

[1]      In June 2004 the applicant, Mr Amit Sengupta, was appointed to the position of Office Manager in the mechanical engineering department of the faculty of engineering at the University of Auckland. (The University). In mid October 2006 Mr Sengupta was dismissed from his position for *poor performance*. Mr Sengupta says that this dismissal was unjustified. He says that the process followed by the University in investigating the issues surrounding his employment was unjust and their conclusions were not ones which a fair and reasonable employer would have reached. Mr Sengupta says that the University never investigated the claims made by him of unfair treatment from those to whom he was responsible and that the resulting stress had an impact on his health and subsequently on his ability to undertake his duties. He says he was not given reasonable amount of time to attain the standards required by the University. In his statement of problem Mr Sengupta said:

*(the University) did not adequately investigate matters and chose to believe certain employees above others despite (Mr Sengupta) giving evidence to the (University) proving otherwise. Instead of support, the (University) effectively had additional tasks added to the end that such might effectively drive (Mr Sengupta) out of his job.*

[2] Mr Sengupta seeks reinstatement to employment with the University, redeployment to an alternative position, reimbursement for lost income and compensation for hurt and humiliation

[3] The University says that Mr Sengupta's dismissal was justified. They say that they investigated the matters raised by Mr Sengupta but formed the view that these were without foundation. They say that Mr Sengupta was dismissed because he failed to perform the financial and administrative tasks contained in his job description to a satisfactory standard, that the University used its best endeavours to support him to achieve a satisfactory work standard, and that Mr Sengupta consistently refused to accept that his work was unsatisfactory.

### **The events that led to Mr Sengupta's dismissal**

[4] The events outlined below are of necessity a summary of the detailed evidence presented to me both in written form and in response to questions at the investigation meeting. I have set out what I perceive are the most important and most illustrative points in that evidence. I wish to reassure the parties that in reaching my conclusions I have taken account all of the evidence presented to me.

#### *Mr Sengupta's appointment*

[5] Mr Sengupta says that at his interview for the position at the University he conveyed to the interview panel, as outlined in his CV, that he was not competent to perform administrative tasks and that his skills were particular and relevant to finance work. The Head of the Department of Mechanical Engineering, Professor Gordon Mallinson, says that the panel clearly explained to Mr Sengupta that the position was not solely an accounting position and accounting tasks would possibly make up half of the duties. Professor Mallinson says that Mr Sengupta expressed his willingness to do other jobs and appeared to understand that the Office Manager position would have approximately 50-50 split between accounting tasks and administrative tasks.

*Initial concerns regarding performance*

[6] Mr Sengupta says that while his job description outlined a number of tasks, he devoted his time to the financial aspects of the position. He said he believed that there was an informal arrangement between himself and his immediate supervisor, Ms Sharp, who largely undertook the administrative aspects of the job in return for his work and knowledge of financial matters. He says that when he arrived in the Department internal financial controls were rudimentary and *in something of a mess*. He says he received praise for his work in the Department and received pay rises in September 2004 and February 2006.

[7] Professor Mallinson says that during 2005 he began to have concerns regarding Mr Sengupta's ability to undertake his administrative responsibilities to an adequate standard. However he says that he appreciated that Office Manager was a new role for Mr Sengupta and that he himself was new in the role of Head of Department. He says he took the position that Mr Singleton needed time to become assimilated into the departmental systems and that with time these issues would sort themselves out. The University's Human Resources Manager, Ms Susan Cathersides, says that the increase in salary in September 2004 was a result of the Faculty of Engineering's practice of reviewing basic performance after a settling in period of three months and that the pay increase subsequently awarded was nothing to do with Mr Sengupta's performance but was a contractual entitlement that could not be withheld. Professor Mallinson says that during 2005 there were clearly communication problems with Mr Sengupta and these were highlighted in his performance review at the end of that year. That performance review included the comment:

*(Mr Sengupta) has continued to learn the financial and asset management procedures of the University. He has had some difficulty effectively communicating with Faculty administrative staff, and needs to work on improving this aspect of his working environment. He has been encouraged to work with the HoD on ways to improve the financial model of the department's operating.*

*Deterioration in relationships*

[8] Mr Sengupta suggests that his relationship with other staff, in particular with Ms Sharp, changed towards the end of 2005 and early in 2006. He says that at first he thought that a catalyst for this change may have been his application for a position in another department. He says that Ms Sharp had said that in doing so he was *stabbing her in the back*. He says that this comment was made in a *joking or appreciative manner* indicating that she did not want him to leave the Department of Engineering. Subsequently, he says, he came to the conclusion that this was not the reason for the change.

[9] In December 2005 Mr Sengupta was asked by Ms Sharp to move out of his office and into the general reception area. Mr Sengupta says that he was advised that all other departments have separate offices for the departmental manager (in this case Ms Sharp) and that he was required *to learn, adapt and do other office duties in the Department*. In January 2006 Mr Sengupta says he showed Ms Sharp a new computer based programme which he had developed which he believed would be beneficial to the Department. Ms Sharp apparently responded that she did not believe that it would be useful. Mr Sengupta says he believes that Ms Sharp had begun to see him and his ideas as a threat to her authority.

*First meeting to discuss performance issues*

[10] On 12 February 2006 Mr Sengupta was asked by Ms Sharp to attend a meeting on the 14 February. When he asked Ms Sharp what the agenda of a meeting was, she responded *I don't know, you can ask (Professor Mallinson)*. Unfortunately Professor Mallinson was not available prior to the meeting. As it transpired the meeting was an attempt by Professor Mallinson and Ms Sharp to bring some performance issues to Mr Sengupta's notice. During the meeting Ms Sharp went through Mr Sengupta's job description. According to the University the majority of tasks on his job description were being performed by another departmental employee, or by Ms Sharp.

[11] According to Professor Mallinson's evidence it was agreed at the meeting that Mr Sengupta would be responsible for a number of specific tasks. At the completion of the meeting the University prepared minutes of the meeting and these were given to Mr Sengupta. Mr Sengupta says that at the meeting he was made to feel incompetent

in his job despite having always completed the tasks given to him. He says that he felt ambushed and the subject of a meeting took him entirely by surprise.

[12] Mr Sengupta says that following the meeting Ms Sharp gave him a list of additional tasks for which he was to become immediately responsible. He says the list related to administrative tasks and not tasks which he had previously been required to do. In his evidence he says:

*I was made to take on additional tasks, with no offload of my previous workload onto any other staff members. In my view these were mainly administrative and clerical tasks which Ms Sharp and Ms R. had previously completed. I believe that the pressure of having to complete this additional work as well as the responsibilities I already had was put on me by my superiors as they were aware of areas where I was not so strong and wanted to find ways to highlight these and create pressure so as to ensure I made mistakes and could provide a cloak so I could effectively be dismissed or out of desperation would leave.*

[13] Several days after his meeting with this Professor Mallinson and Ms Sharp, Mr Sengupta wrote to, and arranged a meeting with, the registrar of the Department of engineering, Mr Keith Willson. Following this meeting Mr Willson wrote to Mr Sengupta saying:

*I have raised the issue of you not being advised of the reason for the meeting prior to attending and the Department has apologised for this and will ensure that if further meetings are found necessary you would be advised in advance what the purpose of such a meeting is to be.*

*I have in addition requested the Head of Department to clarify the instruction from your departmental manager...*

#### *Mediation*

[14] Also subsequent to the meeting with Mr Willson, and at his suggestion, the parties agreed to attend mediation with the University mediator. Mr Sengupta was unhappy with this process for several reasons including:

- The mediator held separate meetings with the Department representatives on the one hand and Mr Sengupta on the other.
- While he was able to take support people with him to the first mediation meeting he was advised by the mediator that support people would not necessary for the two subsequent meetings.
- The mediation was conducted in a way that assumed that the issue was one relating to his performance as opposed to the behaviour of the University staff.

***Second meeting regarding performance***

[15] On 8 May 2006 Mr Willson sent an e-mail to Mr Sengupta inviting him to attend a meeting on 10 May to discuss Mr Sengupta's performance. This e-mail said the meeting was to be held in terms of Mr Sengupta's Collective Agreement and that:

*This is an informal meeting, the outcome of this meeting could well be an instruction to improve performance.*

*I should advise you that this informal meeting does not constitute a disciplinary meeting under the terms of the collective agreement. As such there is no need for a support person to be invited.*

*Issues to be discussed will include:*

- *your continued failure to reconcile accounts according to the procedure issued.*
- *A discussion regarding your future tasks and the standard expected.*

[16] Mr Willson's recollection of this meeting is that he discussed with Mr Sengupta the financial reconciliations not being completed in the correct manner and instructed Mr Sengupta that he was to use the reconciliation process Ms Sharp had prepared and within an agreed time frame. He says that Mr Sengupta indicated that he could meet the timelines Mr Willson had suggested. Mr Willson said he made it very clear that there was to be no deviation from the procedures for the reconciliation of accounts. Mr Willson says that other issues discussed at the meeting included the need for Mr Sengupta to be accurate when completing departmental administrative tasks including presentation of departmental meeting minutes and the formatting of the exam scripts. Mr Sengupta in his written statement does not disagree that these

were the issues raised and discussed. However he spends a good deal of time arguing that the reconciliation system required by Mr Willson and Ms Sharp was not as efficient as the one he was suggesting and that the taking of minutes (a task which was later to raise some difficulties) was a new task for which he was given no training.

[17] Following the meeting on 10 May Mr Willson wrote to Mr Sengupta:

*With regard to reconciliations I am now able to confirm that you are to reconcile ALL the departmental activity centres including research activity centres.*

*The reconciliations for January, February and March of this year still had not been completed in the correct manner as explained to you this morning.*

*Therefore you are to comply with the following schedule:*

- *January's reconciliations...*
- *February's reconciliations...*
- *March's reconciliations...*
- *April's reconciliations...*
- *All reconciliations to cover all departmental activity centres including research accounts.*
- *There is to be (no?) deviation from the laid out procedure for the reconciliation of accounts.*
- *If for any reason you are unable to complete the reconciliations as specified above laid down deadlines you are to advise me with a copy to your departmental manager before the deadline has been reached.*
- *The minutes of a departmental meeting to be typed up in a similar manner to previous minutes which are to be given to you by your departmental manager today.*
- *Written procedures on how to type up examination scripts will be given to you by the departmental receptionist.*

*Should you have any queries relating to the contents of this e-mail you are to ask me in the first instance.*

*Commencement of the disciplinary process*

[18] According to Mr Willson Mr Sengupta did provide the reconciliations within the agreed timeline but, despite his instructions, the reconciliations were still wrong. In addition to the issue regarding the reconciliations Mr Willson says he was advised of an incident which occurred on the 23 May. Mr Sengupta had, apparently, failed to assist one of the departmental administrators to find some missing exam papers and had commented that he *would check on the exam papers as time permits*. Mr Willson says that *this was an incredibly irresponsible and inappropriate comment to make at a time when an urgent issue had been raised involving exam papers that were overdue for pending exams*.

[19] On 24 May 2006 Mr Willson again met with Mr Sengupta, outlined his ongoing concerns and advised him that he was instigating the disciplinary procedures in accordance with Mr Sengupta's employment agreement. Following this meeting Mr Willson wrote to Mr Sengupta:

*Following on from our meeting this morning I am deeply concerned regarding your ability to perform the tasks for which you have been employed for.*

*You have now attended two informal meetings with me and three meetings with me and the mediator, the main topic of these meetings was your failure to perform financial reconciliations for the months of January 2006 onwards. At each of these meetings you have produced incorrect reconciliations, you have again had the process explained and been given a copy of the process and asked if you understood the process to which you have answered in the affirmative.*

*At the meeting this morning I explained that these reconciliations were still incorrect and that you were still failing to comply with the process.*

*Also in this meeting we reviewed the tasks that you have been given to do at our last meeting of two weeks prior.*

*It is regrettable that these tasks have not been completed in a manner that one would expect of a level 4 administrator.*

*You are now required to attend a meeting with me, Edith Sharp as your direct manager and Sue Cathersides, HR Manager, ... at 3 p.m. on Wednesday 31 May 2006 to explain what I believe to be your unsatisfactory performance.*

*While no decision as to the outcome of the meeting will be determined until you have had the opportunity to respond to allegations, I regard your unsatisfactory performance as sufficiently serious to warrant this meeting being conducted under the terms of the disciplinary procedures contained in your employment agreement.*

*You may wish to bring a support person to this meeting.*

[20] Due to Mr Sengupta's illness the meeting proposed for 31 May eventually took place on 21 June. Mr Sengupta was accompanied by his representative, Mr Robson. The meeting canvassed a number of issues and concluded on the understanding that Mr Sengupta would have an opportunity to respond in writing to the performance issues raised. Following the meeting there was an exchange of letters between Ms Cathersides and Mr Robson and eventually the decision was taken to issue Mr Sengupta with a formal warning. This decision was contained in a lengthy letter from Ms Cathersides to Mr Robson which responded to Mr Sengupta's concerns, outlined the University's ongoing performance issues and concluded:

*Having given careful consideration to your response to the concerns raised on 21 June, I am of the view that Mr Sengupta's performance is not of the standard that can reasonably be expected and that a formal warning is warranted. I suggest that the meeting next week we discuss how best the university can support Mr Sengupta to achieve the required standards so that he can successfully fulfil the expectations of his job description. The areas for discussion include:*

- *Accuracy and attention to detail with administrative tasks;*
- *Reconciliation - timeliness and accuracy;*
- *Administrative skills e.g. minute taking and typing;*
- *Any other areas that you may identify.*

*The University remains committed to working constructively with Mr Sengupta to successfully resolve matters and would welcome suggestions from him on how this can be achieved. The University will also consider any response he may wish to make to points raised in this letter.*

[21] A further meeting was held on 5 July at which it was confirmed that a formal warning would be issued. According to Mr Willson's evidence this meeting was reasonably positive and Mr Sengupta said that he could do the job and was going to focus on looking forward. Mr Sengupta was given specific tasks including completing the June reconciliation, completing a research grant report and completing the photocopying report requested by Professor Mallinson. It was also agreed that Mr Sengupta's progress be reviewed in one month. Following the meeting Ms Cathersides again wrote to Mr Robson confirming the warning and outlining the specific tasks set for Mr Sengupta.

[22] Mr Sengupta does not disagree that these meetings took place or what happened at them. However in his statement of evidence he addresses all of the performance issues and specific tasks and says:

*I had previously addressed the (issues) and the reasons why they existed in previous communications and feel the University neither considered those reasons given previously or provided adequate support for me in ensuring that all tasks were completed to the standard required by them.*

*I do not believe that I was acting inefficiently or was incapable and I tried to co-operate with the University at every opportunity. I did not believe that I underperformed as to warrant a formal warning and therefore did not accept the validity of a formal warning...*

*The deterioration of the relationship between Ms Sharp and I is also mentioned... I firmly believe that this is due to Mr Willson, Professor Mallinson and subsequently the University's failure to enquire into the issues at the start when I first raised my concerns to the management.*

*Further performance issues*

[23] According to the University's witness's a number of specific new performance issues occurred, or came to light, after the meeting of July 5. These included a failure to sort and/or distribute mail, incorrect action in regard to an urgent courier pack, incorrect advice given to students and, most seriously in the view of the University, the discovery of numerous outstanding invoices (dating back over a year) on and in Mr Sengupta's desk. Over the subsequent weeks Mr Sengupta was on sick leave for a number of days and the relationship between Mr Sengupta and Ms Sharp deteriorated to the point where Ms Sharp also found it necessary to take some time off work due to stress.

*Further disciplinary meeting*

[24] On 18 August 2006 a further disciplinary meeting was held. Once again Mr Sengupta was accompanied by Mr Robson. At this meeting the list of tasks outlined at the previous meeting was reviewed and the additional matter, of the outstanding invoices, was raised. The opportunity was also taken by Ms Cathersides to review each of the tasks on Mr Sengupta's job description to identify what he was and was not doing. Following this meeting a formal final warning was issued to Mr Sengupta. This formal warning was contained in a letter to Mr Robson dated 1 September which said, in part:

*(Professor Mallinson) reported that none of the tasks (previously set) had been successfully completed to the standard required.*

.....

*Even allowing for the fact that (Mr Sengupta) had been on sick leave for 19.5 days during the period the University is of the view that there was sufficient time to complete these three tasks successfully.*

*It was disappointing to have to raise with (Mr Sengupta) another matter; that is concerns about the non payment of invoices, some dating back to 2005. These invoices had been identified while Mr Sengupta was on leave and the department was endeavouring to ensure that work did not accumulate on (his) desk while he was away and impact on his ability to complete his tasks on his return from leave.*

.....

*It was clear from this discussion that (Mr Sengupta) is doing only a small proportion of the duties of the Office Manager. The University does not accept that (Mr Sengupta) has been undertaking 80% of the work in the departmental office.*

*Regrettably (Mr Sengupta) has not successfully completed the tasks assigned to him and further problems have been identified with his financial management skills which, given (his) previously stated skills and experience, should not prove difficult for him. Under the circumstances there was no other alternative but to issue (Mr Sengupta) with a final warning that (his) performance is below the standard expected of him. Failure to achieve the required standard will leave the University no alternative but to dismiss him.*

*I heard (Mr Sengupta's) claims of problems with his relationship with (Ms Sharp) and, in order to support (him), it was agreed that he report to Mr Willson at the end of each day on matters relating specifically to the financial tasks.*

[25] Mr Willson says that following the meeting of 18 August he was advised of a number of ongoing performance issues. These issues included:

- a significant amount of mail continually being found on Mr Sengupta's desk.
- Taking three days to complete a research grant register (which should have taken a much shorter time) and an end product that was unsatisfactory.
- Difficulty in completing any of the asset register even after extensive involvement by Mr Willson.
- Mr Sengupta overlooking the fact that he had a copy of a new employees employment agreement on his desk resulting in a new agreement having to be issued.

In summary Mr Willson says there was *absolutely no improvement in Mr Sengupta's performance at any time throughout 2006. In fact he continued to make more and more errors.*

*Final disciplinary meetings and dismissal*

[26] In early October Professor Mallinson prepared a report on Mr Sengupta's work performance. This report outlined Professor Mallinson's concerns regarding Mr Sengupta's ongoing performance and concluded:

*Mr Sengupta is not working at anything like the level of performance expected of a level 4 administrator. I have seen no real change in his level of performance over the period of this report. His continued presence here is a significant impediment to the administrative function of this department.*

[27] This report was given to Mr Sengupta at a meeting on 9 October 2006 and a further meeting was arranged to allow time for Mr Sengupta to prepare a response. After some misunderstanding as to when his response was due, Mr Sengupta provided a lengthy written response on 13 October. On 17 October 2006 the parties met again. This meeting lasted for more than two hours during which, according to Ms Cathersides, Mr Sengupta was given an opportunity to address all of the issues of concern. Ms Cathersides says that, in her opinion, Mr Sengupta added nothing new and that:

*One of the underlying problems that had existed throughout this process was that Mr Sengupta always considered that there was no problem with his performance and that he should be left to do just the financial aspects of his job.*

[28] Following this meeting Ms Cathersides made the decision that Mr Sengupta should be dismissed. She says she came to the conclusion that the University had given Mr Sengupta every opportunity to achieve the reasonable standard expected of him but that he had failed to make any progress and his performance had continued to deteriorate. She says that she took into account a number of matters in coming to this conclusion, including:

- In addition to the apparent inability of Mr Sengupta to perform his duties, the relationship between Mr Sengupta and others in the Department had completely broken down.

- There appeared little point in continuing to offer ongoing support and training as Mr Sengupta had refused both to acknowledge his performance was unsatisfactory and offers of training and provision of support.
- She considered whether alternative positions would be available within the University but came to the conclusion that this would merely transfer the same performance problems to another department.
- She took into account Mr Sengupta's health issues and absence on sick leave for a reasonable period of time over the previous few months. She concluded that Mr Sengupta had been at work during that period but had not performed the tasks set for him. In addition the work he was doing while at work was of a poor standard. She also took into account that the University had offered Mr Sengupta the opportunity, which he had refused, to have his health checked independently.

The decision dismiss Mr Sengupta was conveyed to him at a meeting on 17 October 2006 and confirmed in a letter dated 18 October.

### **Legal considerations**

[29] As Mr Wackrow quite correctly points out in his submissions, when an employer makes the decision to dismiss an employee it is for the employer to show that the dismissal was justified. In terms of the Employment Relations Act (the Act) at section 103A, the Authority, when determining whether or not a dismissal was justified, must consider:

#### ***103A Test of justification***

*For the purposes of section 103(1)(a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by considering whether the employer's actions, and how the employer acted, were what a fair and reasonable employer would have done in all the circumstances at the time the dismissal or action occurred.*

[30] When considering what *a fair and reasonable employer would have done*, it is appropriate to consider what the Employment Court have outlined in earlier judgements. As far back as 1993 in *Trotter v. Telecom Corporation of New Zealand Limited* [1993] (2) ERNZ, 659, the Court set out a number of issues that an employer should consider before deciding to dismiss an employee for poor performance. Mr France has also drawn my attention to *Ramankutty v. Vice Chancellor of the University of Auckland* (25 October 2001, Goddard CJ, AC53B/01) where the Court said, at paragraph 23:

*The position was over the years perhaps less clear when the ground for dismissal is not misconduct but non-performance. There seemed to be an absence of clear statements defining the employer's obligations in law. This Court's judgment in Trotter v Telecom Corp of NZ Ltd [1993] 2 ERNZ 659 attempted to fill that gap by reference to some observations in particular previous decisions of the Court and its predecessors and also by reference to rules that had been found relevant in similar jurisdictions overseas. The net result is well understood. Just as with misconduct, the employer must carry out a fair investigation with full participation in it by the employee. Having done that, the employer is then entitled to come to a decision whether the employment of the employee is going to be continued, provided always that the employer has not only followed a fair procedure during the investigation of the complaints about the employee but has also previously identified the perceived deficiencies to the employee and given the employee an opportunity that is reasonable to improve his or her performance by means and to a standard both of which are objectively measurable and have been objectively measured. ....*

## **Discussion**

[31] The test of justification as set out in section 103A of the Act was introduced in late 2004 i.e. after both the *Telecom* and *Ramankutty* cases were decided. However the tests set out are well-known and must be given some weight when determining what *a fair and reasonable employer* would do. Section 103A requires that the Authority look at all of the circumstances the employer found themselves in at the

time the decision to dismiss was made. The judgements in *Telecom* and *Ramankutty* form part of the that backdrop.

[32] Mr Sengupta places great weight on his assessment that the initial meeting i.e. that held in February 2006, was unfair, in particular because he was unaware of the nature of the meeting before it took place. After the meeting the University apologised to Mr Sengupta for not having advised him of the nature of the meeting ahead of time. However they point out that the meeting was not a disciplinary meeting but rather a meeting to advise Mr Sengupta of the perceived shortcomings in his performance. While I agree that the University would have been better to advise Mr Sengupta of the nature of the meeting I do not find that their failure to do so undermines or renders unjustified the eventual decision to dismiss him. No decisions were taken at the February meeting and Mr Sengupta had ample opportunity to respond subsequently regarding the issues raised. Having attended the meeting Mr Sengupta should have been in absolutely no doubt that his performance was not to the standard required by the University.

[33] Following the meeting in February 2006 Mr Sengupta raised a series of issues with the University regarding his relationship with Ms Sharp. He argued that it was his relationship with Ms Sharp (or, more accurately, Ms Sharp's attitude towards him) that was the problem, not his performance. The University, I find, properly investigated Mr Sengupta's concerns but came to the conclusion that these were unfounded. Despite this conclusion the University took the additional step of placing the ongoing disciplinary and performance issues in the hands of Mr Willson.

[34] Mr Sengupta says that he had always made it clear that his skills were in the area of financial management and not administration. However the job description for the position he accepted clearly included a range of administrative duties and I accept the University's assurances that this was made clear to Mr Sengupta at the time he was appointed. Having reviewed the evidence in this regard I find that the duties expected of Mr Sengupta were within the scope of the job description for the position to which he was appointed, were appropriate given the relative seniority of the position. and the standards expected were reasonable and were clearly spelt out to Mr Sengupta.

[35] It is beholden on any employer to ensure that an employee is given every opportunity to meet the required standard before a decision is made to dismiss. In my assessment the University did give Mr Sengupta every opportunity. Over a number of months - from February to October 2006 - they spelled out to Mr Sengupta the required standards, pointed out where he was failing to meet those standards and offered him numerous opportunities to improve. Regrettably Mr Sengupta appears not to have accepted that his performance was below standard and was unwilling or unable to reach that standard.

### **Determination**

[36] Having given Mr Sengupta every opportunity to reach the standard of performance required of him and given all of the circumstances, the University were justified in dismissing him. **Mr Sengupta does not have a personal grievance against the University of Auckland and is therefore not entitled to the remedies he seeks.**

### **Costs**

[37] Costs are reserved and the parties are invited to attempt to resolve this issue between themselves. If they are unable to do so the University may file and serve a submission in respect of costs within 28 days of the date of this determination. Mr Sengupta will then have 14 days in which to file and serve a response.

James Wilson

Member of the Employment Relations Authority