



[2] In his submission Mr Scott does not set out the actual costs expended by Pacific Blue. Rather he canvasses the correspondence between the parties in attempting to reach agreement on the issue of costs. He suggests that Ms Salton should be ordered to pay Pacific Blue the “daily tariff” (\$3000) less a 10% reduction to take account of her unjustified suspension.

[3] In reply Ms Keys, for Ms Salton, submits that *Ms Salton’s suspension and dismissal were inextricably intertwined*. She argues but Mr Scott seems to be *attempting to minimise the wrongdoing* (in unjustifiably suspending Ms Salton). She says that Ms Salton’s Union (FARSA) represented her in the Authority and is not seeking costs. She submits that given the nature of the case it is appropriate that costs should lie where they fall.

## **Discussion**

[4] The principles to be applied by the Authority in determining the appropriate level of costs were set out by the Employment Court in *PBO (formerly Rush Security Ltd) v Da Cruz* [2005] 1 ERNZ 808: and include:

*There is a discretion as to whether costs would be awarded and what amount.*

*The discretion is to be exercised in accordance with principle and not arbitrarily.*

*The statutory jurisdiction to award costs is consistent with the equity and good conscience jurisdiction of the Authority.*

*Equity and good conscience is to be considered on a case by case basis.*

*Costs are not to be used as a punishment or as an expression of disapproval of the unsuccessful party’s conduct although conduct which increased costs unnecessarily can be taken into account in inflating or reducing an award.*

*It is open to the Authority consider whether all or any of the parties costs were unnecessary or unreasonable.*

*That costs generally follow the event.*

*That without prejudice offers can be taken into account.*

*That awards will be modest.*

*That frequently costs are judged against a notional daily rate.*

*The nature of the case can also influence costs and this has resulted in the Authority ordering that costs lie where they fall in certain circumstances.*

The Court went on to say:

*We hold that these principles are appropriate to the Authority and consistent with its functions and powers. They do not limit its discretion and proper application of them should ensure that each case is considered in the light of its own circumstances. While these general principles are applicable also to the Court, the Authority is not bound by the Binnie principles which extend the range of costs which the Court may award beyond what could reasonably be labelled “modest.” (My emphasis)*

### **Determination**

[5] I can see no reason why these principles should not be applied in this case. The single unusual circumstance is that, while Ms Sultan was unsuccessful in her major claim (that she had been unjustifiably dismissed) she was successful in the lesser claim that she had been unjustifiably disadvantaged by her suspension. Equity suggests that while Pacific Blue should receive some contribution to its costs (*costs generally follow the event*) there should be some recognition of Ms Sultan’s partial success. I agree with Ms Key’s comment that Ms Salton’s suspension and dismissal were *inextricably intertwined*. Evidence in respect to the two events would have been difficult to separate. On balance a 50% discount of what Mr Scott refers to as the “daily tariff” seems the fairest outcome.

[6] **Doreen Salton is to pay Pacific Blue Employment and Crewing Ltd the sum of \$1500 (including GST) as a contribution towards their costs.**

James Wilson

Member of the Employment Relations Authority