

HOW TO CONDUCT INQUIRIES/INVESTIGATIONS AND HEARINGS

I recently reported on NUM obo Selemela / Northam Platinum Ltd. The Labour Appeal Court allowed lapsed warnings to be used by the Employer against the employee to show that the employee has a propensity for a particular misconduct.

The above is called **Similar Fact Evidence**. It establishes the conditions under which factual evidence of the employee's past misconduct can be admitted for the purpose of showing that the employee has committed the misconduct before.

So what is it?

It is prior misconduct that is same or similar in nature to the misconduct currently complained about. It is used to show that the employee has a propensity to misconduct him/herself in a particular way. This evidence is usually heard in evidence in aggravation but can be used if the evidence on the particular charge is scant.

We have learnt from the above case that even lapsed warnings may be used against an employee most effectively.

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