Sustained! Objecting to Evidence in Disciplinary Enquiries and Arbitrations
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1. Introduction:

1.1 The rules of evidence applicable in workplace disciplinary enquiries (and related arbitrations) find their source in the SA civil and criminal rules of evidence:

- Criminal Procedure Act, Civil Proceedings Evidence Act
- Common law (inherited almost exclusively from British law, which was established within a jury system)

1.2 The rules are designed to:

- 1.2.1 reduce errors
- 1.2.2 ensure that any errors made favour the innocent
- 1.2.3 protect-epistemic error reduction

1.3 They were developed in a jury system, where it was considered essential to exclude from evidence facts which, although relevant, were likely to ‘confuse’ or ‘improperly’ influence the jury, thus resulting in a false result.
1.4 There are significant differences between legal trials (both criminal and civil) and processes related to workplace discipline

1.4.1 no jury

1.4.2 speed and efficiency imperative

1.4.3 evidence may be heard in different fora, for different purposes

1.4.4 the Labour Relations Act imperatives

1.5 The rules of evidence applied in processes related to workplace have thus been developed differently to those applied in legal trials.

The Labour Relations Act

Labour law jurisprudence developed by the CCMA and Labour courts

2. Rules of evidence

2.1 General Principles: Relevance and admissibility

3. Exclusionary Rules

3.1 Character Evidence
3.2 Similar fact evidence

3.3 Opinion Evidence

3.4 Previous Consistent Statements

3.5 Hearsay evidence

3.6 Illegally/Unconstitutionally obtained evidence