SAMUEL SUOMIE, DERRICK TITO and TOELANDO BARCLAY, and CHARLES C. TARN, Deputy Director/Hearing Officer, Ministry of Labour, Appellants, v. HIS HONOUR JOHN H. MATHIES, Judge, National Labor Court, Montserrado County, and DEEP SEA FISHING CORPORATION, Appellees.

APPEAL FROM THE JUDGMENT OF THE NATIONAL LABOUR COURT FOR MONTSERRADO COUNTY.

Heard: May 17, 2001. Decided: July 6, 2001.

1. A letter of suspension which states that the suspension is for an indefinite period, and which provides that the termination of the indefinite period of suspension is contingent upon the performance of known conditions of impossibility, is to all intents and purposes a letter of dismissal.

2. A letter of indefinite suspension which places impossible conditions for lifting of the suspension is a constructive letter of dismissal and not a letter of suspension.

3. The action of an employer in having civilian employees suspected of the commission of a criminal act subjected to investigation by military officers and personnel, and which results in their illegal detention and torture by a military contingent constitutes unfair labor practice.

The appellants complained to the Ministry of Labour that while in the employ of the appellee, serving as security officers, their employer had caused them to be delivered on two occasions to the ECOMOG Peace Keeping Force for investigation because of the disappearance of a boat and its contents, owned by the appellee. The appellant alleged that whilst they were under arrest and detention by ECOMOG they were subjected to beatings and other forms of torture, and that although they were found not to have been responsible for the disappearance of the appellee's boat and its contents, they were ordered released by the Ministry of Justice only upon the intervention of their relatives. They also alleged that their employer had refused to have them return to work after their release, serving them instead with written letters of indefinite suspension which stated that the suspension would be lifted only upon their return of the missing boat and its contents which ECOMOG had determined had sunk in the Atlantic Ocean due to heavy rains and storm.

The hearing officer found that the appellants had been illegally dismissed and awarded them sums to compensate for the illegal dismissal. On appeal by the employer to the National Labour Court for Montserrado County, the judge reversed the decision of the hearing officer, stating that the appellants had not been dismissed but rather suspended, and that they had failed to produce any letter showing that they had been dismissed.

On appeal, the Supreme Court reversed the judgment of the National Labour Court, holding that the indefinite suspension of the appellants which carried the condition for their reinstatement that they fulfill acts which were impossible, as bringing back the boat which had been swept into the Atlantic Ocean and had sunk due to rains and storm, was actually not a suspension but constituted a dismissal. The dismissal was illegal, the Court said, because it was predicated upon the act of nature or God.

The Court also found that the arrest and detention of the appellants by military personnel, at the instance of the appellee, and their torture while in detention, by such military personnel, constituted unfair labor practice for which the appellee should be held liable. The Court therefore reinstated and affirmed the decision of the hearing officer holding the appellee liable to the appellants.

Elijah Y. Cheapoo of the Cheapoo Law Firm appeared for appellant. Nyenati Tuan of the Tuan Wreh Law Firm appeared for appellee

MADAM CHIEF JUSTICE SCOTT delivered the opinion of the Court.

This is an appeal to this Court for a review of the final judgment of the assigned judge of the National Labour Court, made in a petition for judicial review, wherein he reversed the decision of the hearing officer, Charles C. Tarn, of the Ministry of Labour, rendered in favor of Appellants Samuel Suomie, Derrick Tito, and Toelando Barclay.

The records reveal that the appellants herein were employed by the appellee, Deep Sea Fishing Corporation, as security officers. Toelando Barclay was hired on January 4, 1989, Samuel Suomie was hired on January 29, 1991 and Derrick Tito was hired on September 23, 1994. On July 31, 1995 the appellants were each served letters of suspension. A further scrutiny of the records reveal that the suspension of the appellants was predicated upon the fact that while the appellants were on duty as security guards to secure and protect the appellee's properties, the Aquarius Four, a mini boat, and its contents, had gotten missing. The appellee then had the appellants arrested and turned over to a contingent of the ECOMOG Peace Keeping Forces for investigation. The ECOMOG contingent, the records

revealed, concluded that the Aquarius Four and its contents, like the Sea Rose, a boat owned by other persons, had gotten missing and had sunk in the Atlantic Ocean due to the heavy rain and storm which had occurred on the night of July 4, 1995 when the appellants were assigned on duty at the Bong Mining Company pier on Bushrod Island, Monrovia, Liberia. The appellee, not being satisfied with the findings of this first ECOMOG contingent, had the appellants arrested for the second time and turned over to another ECOMOG contingent. After serval days of torture and detention, the appellants were released only upon the intervention of the Ministry of Justice after their relatives had complained to the Minister of Justice. Following their release, the appellants reported for duty, but on July 31, 1995 they were each served with a letter informing them of their suspension and ordering them not to report to work until the missing mini boat, Aquarius Four, and its contents, were found and delivered by the appellants to the appellee.

The appellants served the suspension for a period of one month and eight days and then reported to work, requesting that they be permitted to resume the performance of their regular duties. The appellee refused the request. Whereupon the appellants proceeded to the Ministry of Labour where they filed a complaint for illegal dismissal against the appellee. The Ministry of Labour investigated the appellants' complaint and found the appellee, Deep Sea Fishing Corporation, liable to the appellants, and awarded the latter a total of L$145,126.50.

The appellee thereafter, on February 5, 1997, filed a petition for judicial review with the National Labour Court for Montserrado County, seeking a review of the ruling of the hearing officer of the Ministry of Labour. The appellants filed returns to the petition and simultaneously filed a motion to dismiss the said petition. The motion to dismiss was heard and denied and the petition for judicial review was heard and granted and the ruling of the hearing officer was reversed. The appellants excepted to the judgment and announced an appeal to this Honourable Court, which appeal was granted.

The first issue this Court must determine is whether the appellants were illegally dismissed? In resolving this issue, we take recourse to the final judgment of the assigned National Labour Court judge, wherein he said, amongst other things, the following:

"The letter of the 31st day of July, A. D. 1995 states on its face that these respondents were suspended. Under section 25.6 of the Civil Procedure Law, Rev. Code 1, I LCLR 198, Best Evidence, it is stated: 'The best evi-dence which a case admits of must always be provided; that is, no evidence is sufficient which supposes the existence of better evidence.' Respondents have not shown any evidence of their dismissal. It is stated that if an agent or employee, through negligence or want of exercise of due care and prudence, exposes his

principal or employer property or funds to waste, he breaches his fiduciary trust, and for such breach his services may be lawfully terminated or suspended. Management has exercised this prerogative of the law. However, respondents are contending that since their suspension is more than thirty days, it is tantamount to illegal dismis-sal. According to the Labor Law, edition by Tuan Wreh, at page 104, it states thus: 'Disciplinary suspension is generally used as a penalty less than dismissal, but evidently more of a serious nature, as compared to warning or reprimand.' However, there is no law giving the minimum or maximum period of suspension from work. Therefore the entire action should have been dismissed since there is no caption under our law called action for suspension. This court is of the opinion consistent with law extant in this jurisdiction that indeed the respondents were only suspended. . .

The Assigned National Labour Court Judge continued:

"The file reveals that on the 15th day of September, A. D. 1995, the respondents filed with the Ministry of Labor a complaint of illegal dismissal. They did not produce any letter of dismissal that would confer jurisdiction over the subject matter of illegal dismissal, but rather a letter of suspension. The hearing officer failed to realize that jurisdiction is not by the consent of the parties but by law. He decided to adjudicate the matter over which he had no jurisdiction...

The Supreme Court has consistently held that where a court or administrative agency lacks jurisdiction over a subject or person, any decision delivered therefrom is illegal, void and of no legal effect.

According to the Supreme Court March Term in the case Bong Mining Company v. Rudolph, it was held that "illegal suspension does not constitute an actionable wrong under the Labor Practice Law of Liberia, and hence an action brought thereunder is a fit subject for dismissal..."

We have stated earlier herein that the appellee had instigated the arrest and detention of the appellants and caused their subsequent investigation for the missing mini boat, Aquarius Four and its contents by two different ECOMOG contingents. The appellee did not deny this allegation. We also stated that the first ECOMOG contingent had concluded after its investigation that the Aquarius Four and its contents had sunk in the Atlantic Ocean on the night of July 4, 1995 due to very heavy rain and storm. This report was made to the appellee since it had requested the investigation. With this information in the possession of appellee, we wonder what was the intent of the language of the appellee's letter dated July 31, 1995, addressed to the appellants. The letter stated:

"Due to your negligence on duty which resulted to (the) disappearing of the corporation's life raft, carbide tank, and oxygen cylinder, which took place on the 7th of July, and put the work of the corporation to a standstill, therefore you are to be suspended from the job for indefinite time without pay until you recover the above equipment and also the tarpaulin as well as the heavy duty battery and two padlocks..."

The appellee's letter of suspension to the appellants made the following points: (1) That the appellants' suspension was for an indefinite period; (2) that the termination of the indefinite period of suspension was contingent upon the appellants recovery and delivery to the appellee of its missing properties, stated in the letter of suspension. We note further that the appellee had been informed by ECOMOG that the Aquarius Four and its contents were at the bottom of the Atlantic Ocean, due to the heavy rains and storm, an act of nature beyond the control of the appellants. The appellants' lack of capacity and ability to recover the said missing properties from the bottom of the ocean was clearly apparent to the appellee management. Hence, the clear intent of the appellee's letter of suspension was to ensure that the appellants did not return to work and that they should no longer receive any salary payments from the appellee. It is therefore our considered view and opinion that a letter of suspension which states that the suspension is for an indefinite period and which provides that the termination of the indefinite period of suspension is contingent upon the performance of known condition(s) of impossibility(ies) is, to all intents and purposes, a letter of dismissal. Accordingly, we find that the appellee management's letters, dated July 31, 1995, addressed to its employees, the appellants, were letters of constructive dismissal and not a letters of suspension. Hence, the investigation at the Ministry of Labour was proper and legal, and within the jurisdiction of the hearing officer under the Labor Practices Law of Liberia.

The second issue that this Court must determine is whether the facts of this case present a case of illegal dismissal exclusively?

The appellee's petition for judicial review stated in counts 1 and 2, as follows:

"1. That on the l5th day of September, A. D. 1995, the respondents filed with the Ministry of Labour a complaint of illegal dismissal. Petitioner request court to take judicial notice of the letter of complaint.

2. That the hearing officer on the 27th day of July, A. D. 1997 rendered a decision holding petitioner liable to respondents herein in an amount of L$145,120.50 (Liberian one hundred forty-five thousand, one hundred twenty dollars & fifty cents), which ruling is contrary to the weight of evidence adduced at the trial, in that the ruling is for unfair labor

practice when in fact the complaint was filed for illegal dismissal, for which a judicial review is being sought."

The records reveal that during the investigation of the appellants' complaint before the hearing officer at the Minis-try of Labour, the appellants testified that after the appellee's properties had gotten missing, the appellee management proceeded to two different contingents of the ECOMOG Peace Keeping Force to request an investigation of the appellants. The appellants further testified that they were detained for a total often (10) days and subjected to beatings and other forms of torture. The appellee did not deny these allegations or seek to rebut them. We therefore conclude that this unrebutted evidence is true and that it describes the actual steps and acts taken by the appellee to investigate the loss of its properties.

This Court considers that the action of the appellee in having the appellants, who are civilians, subjected to an investigation by military officers and personnel, and which resulted in their illegal detention and torture, not by the Liberian National Police, which has the legal and statutory civil duty under the circumstances, constituted unfair labor practice. During the investigation of the appellants by the two separate contingents of ECOMOG, they were unable to obtain the protection of their rights as accused, as guaranteed under the Constitution and laws of Liberia. Further, the records before this Court reveal that while the appellee's witnesses did prove that the appellants worked overtime, they also showed that the witnesses could not prove that the appellants were paid overtime as required under the Labor Practices Law. A witness of the appellee testified that on each holiday that the appellants worked they were paid three (3) cases of fish as their wages. This Court therefore finds that appellee acted in violation of sections 703 and 1511(1)(ii) of the Labor Practices Law.

We have heretofore concluded that the appellee manage-ment's letters of suspension addressed to the appellants constituted letters of constructive dismissal. The appellee had received a report from ECOMOG that the loss of the missing properties was due to an act of nature or God. This meant that the disappearance of the appellee management's properties was due to no fault of the appellants. In other words, the appellee's properties did not get missing as a result of any gross breach of duty by the appellants. Hence, in consideration of the above, we hold that the appellee management com-mitted unfair labor practices and illegal dismissal against the appellants. We further hold that as a consequence thereof the appellee is liable and the appellants are entitled to an award, as determined by the hearing officer.

Wherefore and in view of the foregoing facts, the circumstances enumerated herein, and the law controlling, the decision of the judge of the National Labour Court is hereby ordered

reversed. The decision of the hearing officer of the Ministry of Labour is hereby ordered reinstated and confirmed with the modification that the award shall include an aggregate of twenty-four months salary, at the rate of the average monthly salary earned by each appellant during the last six (6) months immediately preceding the illegal dismissal, plus interest in keeping with law. We further direct that the award of the hearing officer shall be modified to exclude severance pay.

The Clerk is hereby ordered to send a mandate to the National Labour Court ordering it to resume jurisdiction over the case and to give effect to this decision. Costs of these proceedings are ruled against the appellee. And it is hereby so ordered.

Judgment reversed.