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The actual loss has been ascertained in this case and, to repeat, this Court will respect such factual determination in the absence of proof that it was arrived at arbitrarily. There is no such showing. Hence, applying the open policy clause as expressly agreed upon by the parties in their contract, we hold that the private respondent is entitled to the payment of indemnity under the said contract in the total amount of P508,867.00.

The refusal of its vice-president to receive the private respondent's complaint, as reported in the sheriff's return, was the first indication of the petitioner's intention to prolong this case and postpone the discharge of its obligation to the private respondent under this agreement. That intention was revealed further in its subsequent acts – or inaction – which indeed enabled it to avoid payment for more than five years from the filing of the claim against it in 1980. The petitioner has temporized long enough to avoid its legitimate responsibility; the delay must and does end now.

WHEREFORE, the appealed decision is affirmed in full, with costs against the petitioner.

SO ORDERED.

Yap (Chairman), Narvasa, Melencio-Herrera, and *Paras, JJ.*, concur.

SECOND DIVISION

[G.R. Nos. 51612-13. July 22, 1986]

GLOBAL INCORPORATED, *petitioner, vs.* **HON. COMMISSIONERS DIEGO D. ATIENZA, GERONIMO Q. QUADRA and CLETO T. VILLATUYA, and CLARITA ROSAL,** *respondents.*

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SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; OVERTINE PAY; CANNOT BE AWARDED IF AN EMPLOYEE IS NOT ALLOWED TO WORK OVERTIME.**— On the issue of overtime pay, We agree with the conclusion of the Labor Arbiter that the same should be denied for want of sufficient factual and legal basis. The evidence on record shows that the office hours of the petitioner are from 8:00 in the morning to 5:00 in the afternoon, with noon break from 12:00 noon to 1:00 p.m. from Monday thru Saturday. No employee is authorized to work after office hours, during Sundays and Holidays unless required by a written memorandum from the General Manager. During the period from Nov. 1, 1974 to Nov. 16, 1976, no employee of the company was never required to work after 5:00 in the afternoon. Neither did the company require any employee to work during Sundays or Holidays except on Nov. 1, 1976, on which date respondent Clarita Rosal was requested to work through a written memorandum signed by the General Manager. Respondent Rosal admitted this, and that she was properly compensated for her work on said date (Exh. "10").

2. **ID.; ID.; BACKWAGES; MAY BE AWARDED AFTER THE LIFTING OF PREVENTIVE SUSPENSION.**— On the issue of backwages, the National Labor Relations Commission ordered petitioner to pay Clarita Rosal "backwages from Dec. 2, 1976 to May 31, 1978", the date when Asst. Secretary Vicente Leogardo, Jr., rendered his decision lifting the preventive suspension of Clarita Rosal and ordering petitioner to reinstate her to her former position without loss of rights and with full backwages from the time of preventive suspension up to the date of her actual reinstatement. We agree. We note that this decision of the Labor Arbiter ordering reinstatement had not been complied with. Neither was it appealed by petitioner, therefore, the decision had become final and executory. To exempt petitioner from the payment of backwages would be to give premium to the blatant disregard of orders of the Ministry of Labor. Moreover, it would be in consonance with compassionate justice that Clarita Rosal be paid backwages during the period that she was supposed to be reinstated.

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3. ID.; PREVENTIVE SUSPENSION; GROUND FOR IMPOSITION.— Note that the only ground for the imposition of preventive suspension is provided for under Sec. 4, Rule XIV of the Implementing Regulations of the Ministry of Labor which reads – "SEC. 4. *Preventive suspension.* The employer may place the employee concerned under preventive suspension only if the continued employment of the employee poses a serious and imminent threat to the life or property of the employer or of the co-employees. Any preventive suspension before the filing of the application shall be considered worked days, and shall be duly paid as such if the continued presence of the employee concerned does not pose a serious threat to the life and property of the employer or of the co-employees."

APPEARANCES OF COUNSEL

Federico V. Ganaden for private respondent.

D E C I S I O N

PARAS, *J.*:

The instant petition for "*Certiorari, Mandamus* with Preliminary Injunction and/or Restraining Order", seeks a review of the Decision dated June 28, 1979 of the National Labor Relations Commission, which modified on appeal the decision of the Labor Arbiter Miguel P. Soriano, Jr. in NLRC Case Nos, RB-IV-9962-77 and RB-IV-11544-77 entitled "Clarita Rosal versus Global Incorporated"

From the records, what appear undisputed are the following:

Clarita Rosal, herein private respondent, commenced her employment with petitioner Global Incorporated in February, 1970, as a "Sales Clerk" with a salary of P450.00 a month.

On November 11, 1976 Global Inc. filed with the Department of Labor, Regional Office No. 4, an application for clearance to terminate the services of Clarita Rosal, for having violated company rules and regulations by incurring repeated absences and tardiness. (Case No. T-IV-11-7480-76) The subject employee

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was placed under preventive suspension on November 16, 1976 pending resolution of the application for clearance.

On December 3, 1976, Clarita Rosal filed her opposition to the clearance application as well as a counter-complaint against Global Inc., for illegal dismissal, overtime pay and premium pay. (Case No. RB-IV-9962-77).

On February 3, 1977, the officer-in-charge of Regional Office No. 4, Ministry of Labor, Vicente Leogardo, Jr. lifted the preventive suspension of Clarita Rosal, finding her suspension not warranted, and reinstated her to her former position without loss of rights and with full backwages from the time of preventive suspension up to the date of her actual reinstatement. On the said issue of preventive suspension, the officer-in-charge opined.

"x x x., it appears that the continued presence of the subject employee does not pose a serious and imminent threat to the life or property of the employer or co-employees. Her tardiness does not in any way pose serious threat to the property of the employer. As sales clerk, she was required to prepare reports and submit them before closing of office hours in the afternoon. Herein complainant managed to comply with such requirement without prejudice to company's interest."

Consequently, the hearings on the issue of termination and the counter-complaint for illegal dismissal were consolidated and jointly held before Labor Arbiter Miguel P. Soriano, Jr., docketed respectively as NLRC Case Nos. RB-IV-9962-77 and RB-IV-1154-77.

On May 31, 1978, the Labor Arbiter rendered his decision, the dispositive portion of which reads —

"WHEREFORE, all things considered, this complaint for illegal dismissal, overtime compensation and premium pay is hereby ordered DISMISSED for lack of merit. Accordingly, the clearance for complainant's termination is hereby GRANTED.

SO ORDERED."

Clarita Rosal appealed the aforesaid decision tc the National Labor Relations Commission. On June 28, 1979, respondents,

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Commissioners Diego Atienza and Geronimo Quadra modified the appealed decision as follows:

"WHEREFORE, responsive to the foregoing, the following dispositions are made:

(a) respondent is ordered to pay complainant overtime pay at the rate of one hour everyday starting Nov. 1, 1974 to Nov. 16, 1976 when she was suspended;

(b) respondent is likewise ordered to pay complainant backwages from Dec. 2, 1976 to May 31, 1978;

(c) the decision of the Labor Arbiter granting clearance to terminate the services of the complainant is affirmed.

Compliance with the above orders is strictly enjoined and the respondent-appellee is further ordered to submit to the Commission proof of compliance with this Decision after ten (10) days from receipt of the same.

SO ORDERED."

Respondent Commissioner Cleto T. Villatuya voted to affirm the Labor Arbiter's decision.

Hence, the instant petition praying that after hearing, judgment be rendered reversing or declaring the assailed decision null and void and affirming *in toto* the decision of the Labor Arbiter Miguel P. Soriano, Jr.; to order the private respondent Clarita Rosal to pay the petitioner the sum of Two Thousand Pesos (P2,000), as and for attorney's fees and to pay costs of suit; and that pending the adjudication of the case on the merits, a writ of preliminary injunction or restraining order be issued against the respondents or their representatives restraining them from executing or enforcing the assailed decision.

In the Resolution of this Court dated Oct. 17, 1979 respondents were required to file their comment within ten (10) days from notice. In the same resolution, a temporary restraining order was issued enjoining the respondents from enforcing and or carrying out the assailed decision.

In the subsequent Resolution dated March 21, 1980 this Court, acting on the Petition as well as the respondents' Comments

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and petitioner's Reply to the said Comments resolved to give due course to the petition and required the parties to file their respective memoranda, after which the case was deemed submitted for decision.

Petitioner takes issue with the ruling of the National Labor Relations Commission granting backwages and overtime pay in favor of private respondent Clarita Rosal. Thus, it argues that if both the Labor Arbiter who tried the case and the National Labor Relations Commission which reviewed the same, found the grounds of absenteeism and tardiness as valid and just causes to terminate the employment of Clarita Rosal, the inevitable conclusion is that the preventive suspension on the same grounds is likewise just and valid. If the suspension is just and valid, she is not entitled to backwages. (Be it noted that under the Rules of the Ministry, an employee placed *unjustly* under preventive suspension is entitled to be paid her wages, even if she does not work during said period). On the issue of overtime pay, it is the contention of petitioner that the grant of overtime pay in favor of Clarita Rosal at the rate of one hour everyday starting Nov. 1, 1974 to Nov. 16, 1976 is not justified as there is nothing in the record except her bare allegations which would show that she truly and actually rendered said overtime work. Besides it is highly improbable, if not impossible for Clarita Rosal to have rendered continuous overtime services from Nov. 1, 1974 to Nov. 16, 1976, or a period of two (2) years including Sundays and holidays.

After a careful review of the evidence on record as well as the arguments of both parties, We rule —

1. On the issue of overtime pay, We agree with the conclusion of the Labor Arbiter that the same should be denied for want of sufficient factual and legal basis. The evidence on record shows that the office hours of the petitioner are from 8:00 in the morning to 5:00 in the afternoon, with noon break from 12:00 noon to 1:00 p.m. from Monday thru Saturday. No employee is authorized to work after office hours, during Sundays and Holidays unless required by a written memorandum from the General Manager. During the period from Nov. 1, 1974 to

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Nov. 16, 1976, no employee of the company was never required to work after 5:00 in the afternoon. Neither did the company require any employee to work during Sundays or Holidays except on Nov. 1, 1976, on which date respondent Clarita Rosal was requested to work through a written memorandum signed by the General Manager. Respondent Rosal admitted this, and that she was properly compensated for her work on said date (Exh. "10").

The claim of Clarita Rosal that she rendered overtime work from Nov. 1, 1974 to Nov. 16, 1976 has not been substantiated by adequate evidence. Her time records for said period show that she had no time-in and time-out during Sundays and Holidays. Except for some time records where there were no time-outs in the afternoon, Rosal's time records show that she regularly left the office at or a few minutes after 5:00 o'clock in the afternoon. The records where there were no time-outs in the afternoon were sufficiently explained by petitioner's witness as due to a mechanical defect in the office bundy clock. The same omission of time-outs was found in the records of the other employees, but only respondent complained.

2. On the issue of backwages, the National Labor Relations Commission ordered petitioner to pay Clarita Rosal "backwages from Dec. 2, 1976 to May 31, 1978", the date when Asst. Secretary Vicente Leogardo, Jr., rendered his decision lifting the preventive suspension of Clarita Rosal and ordering petitioner to reinstate her to her former position without loss of rights and with full backwages from the time of preventive suspension up to the date of her actual reinstatement.

We agree. We note that this decision of the Labor Arbiter ordering reinstatement had not been complied with. Neither was it appealed by petitioner, therefore, the decision had become final and executory. To exempt petitioner from the payment of backwages would be to give premium to the blatant disregard of orders of the Ministry of Labor. Moreover, it would be in consonance with compassionate justice that Clarita Rosal be paid backwages during the period that she was supposed to be reinstated.

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Note that the only ground for the imposition of preventive suspension is provided for under Sec. 4, Rule XIV of the Implementing Regulations of the Ministry of Labor which reads–

"SEC. 4. *Preventive suspension.* The employer may place the employee concerned under preventive suspension only if the continued employment of the employee poses a serious and imminent threat to the life or property of the employer or of the co-employees. Any preventive suspension before the filing of the application shall be considered worked days, and shall be duly paid as such if the continued presence of the employee concerned does not pose a serious threat to the life and property of the employer or of the co-employees."

As aptly held by Asst. Secretary Leogardo Jr. (Officer-in-charge of Regional Office No. IV of the Ministry of Labor), the continued presence of Clarita Rosal never posed a serious and imminent threat to the life or property of the employer or co-employees as would warrant her preventive suspension.

ACCORDINGLY, the assailed decision of the National Labor Relations Commissions is MODIFIED as follows:

(a) the decision granting clearance to terminate the services of private respondent Clarita Rosal is affirmed;

(b) petitioner is ordered to pay private respondent backwages from Dec. 2, 1976 to May 31, 1978;

(c) petitioner is ordered to pay costs of suit.

SO ORDERED.

Feria (Chairman), Fernan, Alampay, and *Gutierrez, Jr., JJ.*, concur.