

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GEORGE LOFT	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
DELAWARE AND HUDSON RAILWAY	:	
COMPANY, INC., d/b/a CANADIAN	:	
PACIFIC RAILWAY, a/k/a CP	:	
RAIL SYSTEM	:	
Defendants.	:	NO. 00-6497

M E M O R A N D U M

Newcomer, S.J.

April , 2001

Presently before the Court is the parties' request for approval of their Proposed Stipulation to Transfer this case to the Middle District of Pennsylvania (the "Middle District").

Plaintiff, George Loft, has brought this action under the Federal Employers' Liability Act, 45 U.S.C. § 51 et seq. against defendant Delaware and Hudson Railway Company, Inc., d/b/a Canadian Pacific Railway, a/k/a CP Rail System for personal injuries he allegedly sustained while working in the course and scope of his employment with defendant.

Plaintiff filed his Complaint in this Court on December 22, 2000, and defendant filed its Answer on February 20, 2001. On March 28, 2001, the Court conducted a Rule 16 pre trial conference in this case for the purposes set out in that rule. After the parties summarized their positions, and explained the discovery they would seek, the Court informed the parties that it

would issue a pre trial Order allowing the parties ninety days to complete discovery. Both parties vigorously requested a longer discovery period, but the Court declined to extend discovery at that time, informing the parties that should they require more time, they could file a motion for an extension at a later date. Accordingly, the Court issued a pre trial Order on April 5, 2001 requiring the parties to complete discovery by June 28, 2001, and requiring that the parties be prepared for trial by July 17, 2001.

The next day, April 6, 2001, the Court received a stipulation to transfer this case to the Middle District pursuant to 28 U.S.C. § 1404(a). However, that stipulation merely asserted that transfer of this case would be for the convenience of the parties and witnesses, and in the interest of justice. Upon receiving that stipulation, the Court informed the parties that assertions alone were insufficient to justify the transfer of this case, and that the Court would not Order a transfer unless the parties properly justified a transfer under section 1404(a).

Now, the parties have filed a second joint stipulation to transfer this case to the Middle District under 28 U.S.C. § 1404(a). In light of the parties' initial discovery, that stipulation alleges that: 1) plaintiff has never worked for defendant in this district, but rather plaintiff was employed by

defendant in "north-central Pennsylvania"; 2) identified witnesses are not residents of this district; 3) plaintiff is not a resident of this district; 4) preliminary discovery indicates that venue is improper in this district; and 5) venue is proper in the Middle District.

While the Court recognizes that the parties have proposed a stipulation whereby they agree that transferring this case to the Middle District is appropriate, the Court remains bound by its duty to apply the law. Thus, a district court may transfer any civil action to any other district where it might have been brought for the convenience of parties and witnesses, and in the interest of justice. See 28 U.S.C. § 1404(a).

To support their proposed stipulation, the parties first claim that the plaintiff was never employed in this district, but was employed in "north central Pennsylvania".¹ However, the parties fail to articulate why such a fact would make it more convenient for the parties or witnesses to litigate this case in the Middle District. Likewise, the parties fail to argue why such a fact would make transferring this case in the interest of justice.

Next, the parties claim that the witnesses do not reside in this district. However, the parties do not allege that

¹Curiously, the parties never allege that plaintiff was employed within the Middle District of Pennsylvania.

the witnesses reside in the Middle District, thus the Court cannot conclude that transfer would be more convenient for the witnesses, or in the interest of justice on this ground.

In support of their proposed stipulation, the parties also allege that the plaintiff is not a resident of this district. While this is true, plaintiff is not a resident of the Middle District either, and again the Court cannot conclude that transfer would be more convenient for the plaintiff, or in the interest of justice on this ground.

Finally, the parties simply assert that venue is improper in this Court, but is proper in the Middle District without explaining why. Under 28 U.S.C. § 1391(b)(1), venue is proper in this case "where any defendant resides, if all defendants reside in the same State." 28 U.S.C. § 1391(b)(1). Furthermore, pursuant to 28 U.S.C. § 1391(c):

A defendant that is a corporation shall be deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced. In a State which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State, and, if there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts.

28 U.S.C. § 1391(c). After reviewing the parties' proposed stipulation, and reviewing the pleadings in this matter, the

Court can neither conclude that venue is proper in the Middle District, nor improper in this district. Indeed, plaintiff's Complaint only alleges that defendant transacts substantial business in Pennsylvania, an allegation defendant admits in its Answer.

Under the facts and circumstances of this case, and because the parties have failed to demonstrate that transfer is proper under 28 U.S.C. § 1404(a), the Court will not approve the parties' proposed stipulation for a transfer.

An appropriate Order will follow.

Clarence C. Newcomer, S.J.