

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

FRANK KOWALSKI : CIVIL ACTION  
: :  
: :  
v. : :  
: :  
CONSOLIDATED RAIL CORPORATION : No. 97-2381

O R D E R - M E M O R A N D U M

AND NOW, this 3rd day of July, 1997, the motion to transfer of defendant Consolidated Rail Corporation is granted. 28 U.S.C. § 1404(a). The Clerk of Court is directed to transfer the action to the Western District of Pennsylvania.

This personal injury action is brought under the Federal Employer's Liability Act, 45 U.S.C. §§ 51-60,<sup>1</sup> and the Railroad Safety Appliance Act, 45 U.S.C. § 1. Venue is proper in this district in that defendant's corporate headquarters is located in Philadelphia. However, given that plaintiff is not a forum resident, a balancing of the private and public interests protected by § 1404(a) favors a transfer to the Western District of Pennsylvania.<sup>2</sup> See Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995). Movants have the burden of proof. Id.

---

<sup>1</sup> Under FELA's venue provisions, an action may be brought in a district court: (1) in which the defendant resides, (2) where the cause of action arose, or (3) where the defendant was doing business at the commencement of the action. 45 U.S.C. § 56.

<sup>2</sup> Fed. R. Civ. P. 1404(a): "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought."

The interests that weigh in favor of transfer to the Western District of Pennsylvania are:

1. the claim arose and plaintiff was employed primarily in that district;
2. plaintiff is a Western District of Pennsylvania resident;
3. plaintiff's supervisor, a necessary witness at trial, resides there;
4. the majority of plaintiff's medical providers either reside or work in that district;
5. the Western District of Pennsylvania has a stronger public interest in the case.

Against transfer:

1. plaintiff's choice of forum;
2. the marginality of the economic demands given defendant's financial condition.

On balance, the factors arguing for transfer substantially outweigh those to the contrary.

---

Edmund V. Ludwig, S.J.