

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

ROBERT M. MESHER : CIVIL ACTION  
 :  
 v. :  
 :  
 CONSOLIDATED RAIL CORPORATION : NO. 98-0092

**MEMORANDUM AND ORDER**

HUTTON, J.

July 10, 1998

Presently before the Court are Defendant Consolidated Rail Corporation's Motion to Transfer Venue to the Western District of Pennsylvania (Docket No. 3) and Plaintiff's Response thereto (Docket No. 4). For the reasons that follow, the Defendant's motion is granted.

**I. BACKGROUND**

In this action, Plaintiff Robert M. Mesher charges Defendant Consolidated Rail Corporation ("Conrail") with causing him personal injuries by negligently failing to provide a safe workplace, in violation of the Federal Employers' Liability Act, 45 U.S.C. § 51, et seq. (1994) ("FELA") and the Railroad Safety Appliance Act, 45 U.S.C. § 1, et seq. (1994). The case reaches the Court on Conrail's motion to transfer venue to the Western District of Pennsylvania.

On September 18, 1996, Mesher was a Conrail employee, acting within the scope of his employment, when he suffered personal injuries in an unwitnessed incident that occurred in or near Pittsburgh, Pennsylvania. Mesher is a resident of Belle Vernon,

Pennsylvania. Both Pittsburgh and Belle Vernon are located in the Western District of Pennsylvania.

Mesher's supervisors at Conrail were Jack Florida and Matt Weidner, both of Pittsburgh, Pennsylvania. After the alleged accident, Mesher saw Dr. Daniel Bursick of Pittsburgh Neurology Associates, Dr. P. J. Reilly of Monogahela Valley Hospital, and Dr. Jory Richman of Core Network PT, each of whom both work and reside in the Western District of Pennsylvania. Mesher states that he is now seeing Dr. William Simon, and "has presented to" Todd Zimmerman, both of Philadelphia, in the Eastern District of Pennsylvania. Finally, Conrail has its corporate offices in Philadelphia, and Mesher's counsel is based in Philadelphia.

## **II. DISCUSSION**

Conrail moves to transfer this case to the Western District of Pennsylvania under 28 U.S.C. § 1404(a) (1994), on grounds of forum non conveniens. Section 1404(a) provides: "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 parties do not dispute that this action could have been brought in the Western District of Pennsylvania.

The Third Circuit has recently articulated the factors a court must consider in weighing a motion to transfer venue. They are as follows:

The private interests have included:  
plaintiff's forum preference as manifested in  
the original choice; the defendant's

preference; whether the claim arose elsewhere; the convenience of the parties as indicated by their relative physical and financial condition; the convenience of the witnesses-- but only to the extent that the witnesses may actually be unavailable for trial in one of the fora; and the location of books and records (similarly limited to the extent that the files could not be produced in the alternative forum)

The public interests have included: the enforceability of the judgment; practical considerations that could make the trial easy, expeditious, or inexpensive; the relative administrative difficulty in the two fora resulting from court congestion; the local interest in deciding local controversies at home; the public policies of the fora; and the familiarity of the trial judge with the applicable state law in diversity cases.

Jumara v. State Farm Ins. Co., 55 F.3d 873, 879-880 (3d Cir. 1995) (citations omitted); Kramer v. Consolidated Rail Corp., No.Civ.A. 97-1102, 1997 WL 214858, \*1 (E.D.Pa. April 24, 1997) (quoting Jumara, 55 F.3d at 879-880).

As Plaintiff points out, the plaintiff's choice of forum is ordinarily entitled to great deference. See Richards v. Consolidated Rail Corp., No.Civ.A. 94-3942, 1994 WL 58586009, \*2 (E.D.Pa. October 18, 1994). However, it is well established that the choice is accorded less deference when the plaintiff does not live in the forum district and none of the operative events occurred there. See Watt v. Consolidated Rail Corp., No.Civ.A. 97-2203, 1997 WL 288607, \*2 (E.D.Pa. May 21, 1997); Musser v. Consolidated Rail Corp., No.Civ.A. 96-3388, 1996 WL 417352, \*2 (E.D.Pa. July 19, 1996). In an action under FELA, however, some courts have found that the plaintiff's choice of forum is entitled to some deference even where the plaintiff lacks connection with

the chosen forum. See Watt v. Consolidated Rail Corp., No.Civ.A., 1997 WL 288607, \*2 (E.D.Pa. May 21, 1997).

Despite Plaintiff's efforts to establish some connection between his alleged injuries and the Eastern District of Pennsylvania, the Court finds that this is essentially a Pittsburgh case, and ought to be adjudicated in the Western District of Pennsylvania. All of the § 1404(a) private interest factors favor proceedings in Pittsburgh, because all the events took place in Pittsburgh, Mesher lives near Pittsburgh, and potential witnesses like Florida and Weidner live in Pittsburgh. All of the medical personnel that saw Mesher at the time of the incident also work and reside in the Western District of Pennsylvania. Only Mesher's counsel, Dr. Simon and Todd Zimmerman work or reside in the Eastern District of Pennsylvania. But the convenience of counsel is irrelevant, and Mesher does not indicate the extent of his patient relationship with Dr. Simon and Zimmerman.

As for the public interest factors, all weigh in favor of transfer to the Western District. This case is about an accident alleged to have befallen a resident of Pittsburgh, in Pittsburgh, and has no connection with the Eastern District of Pennsylvania or its citizens. It is a Pittsburgh case, and the only reason it is in this Court is because Mesher's counsel is based in Philadelphia. Accordingly, the Motion to transfer venue to the Western District of Pennsylvania is granted.

An appropriate Order follows.

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O R D E R

AND NOW this 10th day of July, 1998, upon consideration of Defendant Consolidated Rail Corporation's Motion to Transfer Venue to the Western District of Pennsylvania and Plaintiff's Response thereto, IT IS HEREBY ORDERED that Defendant's Motion is GRANTED.

IT IS FURTHER ORDERED that this matter is transferred to the Western District of Pennsylvania for further proceedings.

BY THE COURT:

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HERBERT J. HUTTON, J.