

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

CHARLES F. ELDER, : CIVIL ACTION
Plaintiff, :
 :
v. : NO. 98-3281
 :
CONSOLIDATED RAIL CORPORATION :
Defendant. :

M E M O R A N D U M

BUCKWALTER, J.

August 14, 1998

Plaintiff, Charles F. Elder ("Elder") brought this action under the Federal Employer's Liability Act, 45 U.S.C. §§ 51-60 ("FELA"), against his employer, Defendant, Consolidated Rail Corporation ("Conrail"). While at work in Altoona, Pennsylvania, Elder suffered second degree chemical burns from an unwitnessed industrial accident. Elder is a resident of Hollidaysburg, Pennsylvania. Both Altoona and Hollidaysburg are within the Western District of Pennsylvania. Conrail now seeks transfer of this action to the United States District Court for the Western District of Pennsylvania pursuant to 28 U.S.C. § 1404(a), which states "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." Neither party disputes that the

action could have been brought in the Western District. See 45 U.S.C. § 56 (appropriate venues are defendant's residence, where the cause of action arose or where the defendant was doing business at the time of the accident).

Both public and private interests must be considered in weighing a motion to transfer. Jumara v. State Farm Ins. Co., 55 F.3d 873, 879-880 (3d Cir. 1995). Private interests include: plaintiff's choice; defendant's preference; where the claim arose; convenience of the parties; potential that witnesses may be unavailable in one fora; and potential that documents could not be produced in one fora. Id. at 879. Public interests include: enforceability of judgment; practicalities of trial; court congestion; local interest in deciding local controversies; public policies of the fora; and familiarity of the trial judge with the applicable state law in diversity cases. Id.

Traditionally, courts have considered a plaintiff's choice of forum the most significant factor. See Gulf Oil v. Gilbert, 330 U.S. 501, 509 (1947). This is especially true for claims brought under FELA. See Coble v. Consolidated Rail Corp., No. Civ. A. 92-2386, 1992 WL 210325, at *2 (E.D.Pa. Aug. 26, 1992). Plaintiff's choice is routinely given less weight if, however, as here, the claim did not arise or the plaintiff does not reside within the chosen forum. Schmidt v. Leader Dogs for the Blind, 544 F.Supp. 42, 47 (E.D.Pa. 1982); New Image, Inc. v.

Travelers Idem. Co., 536 F.Supp. 58, 59 (E.D.Pa. 1981). Under such circumstances the assumption that plaintiff's choice is convenient becomes less reasonable. Coble, 1992 WL 210325, at *2. Nonetheless, it remains true that where a plaintiff has demonstrated that a forum in which he does not reside will be more convenient for him, that choice is worthy of judicial respect. Id.

In addition to its general claims of undue hardship, inconvenience and delay and its rote characterization of this action as one of "local interest," Conrail notes that three of its witnesses reside in Altoona. Elder's supervisor, Barry Claar, is expected to testify about work assignments, safety rules, inspection and maintenance procedures, subjects all relevant to Elder's claim. Also residents of Altoona and potential witnesses are Drs. Robinson and Pontzter, who treated and/or examined Elder after the accident.

Elder counters that two of his "key witnesses who will likely testify at trial" are located in the Eastern District. Robert McClellan, M.D., his medical expert, whose offices are within the Eastern District and Ramon Thomas, Conrail industrial hygienist, who works at Conrail's headquarters in Philadelphia. Elder also emphasizes that his initial choice of the Eastern District should be honored.

The convenience of Conrail's witnesses, Elder's residence and the site of the accident militate in favor of transfer. On balance, however, these factors do not surpass the combined weight of the deference this court must afford Elder's original choice and the fact that at least two of Elder's witnesses are located in the Eastern District. Additionally, I note Conrail's headquarters and legal offices are not far from this courthouse and Conrail has not made a specific showing of hardship or inconvenience.¹ Accordingly, Conrail's motion to transfer will be denied.

An order follows.

1. Judges within this district have reached different results under similar circumstances. I am of the opinion, however, that generally, a plaintiff's choice of forum remains paramount to all considerations related to transfer, unless it is overwhelmingly clear that by litigating in the chosen forum defendant will be substantially handicapped -- complaints of routine litigation inconvenience and expense are insufficient. One could add, perhaps tongue in cheek, that any opportunity for residents of the outlying counties to visit the birthplace of the nation and the "city that loves you back" should not be easily overlooked.

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O R D E R

AND NOW, this 14th day of August, 1998, upon consideration of Defendant's motion to transfer (Dkt. #3) and Plaintiff's response (Dkt. #4) it is hereby ORDERED that Defendant's motion is **DENIED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.