

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

JOHNNIE WHIGHAM,	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
CSX TRANSPORTATION, INC.	:	NO. 04-4518
	:	
Defendant.	:	

MEMORANDUM

Baylson, J.

February 23, 2005

The Defendant in this FELA case has moved to transfer venue to the Middle District of Florida pursuant to 28 U.S.C. § 1404(a).

In this case, the Plaintiff, Johnnie Whigham, resides in Jacksonville, Florida, where he is employed by CSX Transportation, Inc. (“CSX”). He alleges injury from his duties at work which occurred in the Jacksonville area. It appears that all of the witnesses to the relevant facts live and work in the Jacksonville, Florida area. Plaintiff’s only connection with this district is that his lawyer works here and apparently the lawyer has retained a physician in the Philadelphia area to testify as an expert. There is no indication that this physician has been the Plaintiff’s regular treating physician.

Venue in FELA cases may be established in any district in which the defendant does business,¹ and the Court recognizes that the Plaintiff has substantial discretion as to the choice of venue. However, many courts have allowed a transfer when the only connection with a particular

¹It is undisputed that CSX does business in this district.

district is the plaintiff's lawyer. See e.g., Lindley v. Caterpillar, Inc., 93 F. Supp. 2d 615 (E.D. Pa. 2000) (granting defendant's motion to transfer venue); Faivre v. Consolidated Rail Corp., 1994 U.S. Dist. LEXIS 21405 (E.D. Pa. 1994) (same). See also Solomon v. Continental American Life Ins. Co., 472 F.2d 1043, 1047 (3d Cir. 1973) ("The convenience of counsel is not a factor to be considered [in § 1404(a) motions]."). The fact that Plaintiff's expert physician is located in the Philadelphia area is of very little weight because there is no reason why a doctor in this area had to be selected, and assuming that this doctor is Plaintiff's preferred expert, then there is no hardship for Plaintiff to arrange for the doctor to testify in a venue that is more suitable for all the other witnesses in the case.

Although Plaintiff cites some cases which have allowed a case to proceed in the location of the Plaintiff's lawyer, this Court finds that the policy behind § 1404 would be thwarted, even in a FELA case, if the place of business of Plaintiff's lawyer would be allowed to dictate the place of trial. Although a plaintiff's choice of forum in a FELA action is a "substantial right," a court may nevertheless transfer where the defendant establishes a "clear case of inconvenience." Detrick v. Baltimore & Ohio R.R. Corp. 330 F. Supp. 257, 259 (E.D. Pa. 1971). The Court also notes that the Plaintiff's liability expert is located in Virginia, and therefore, this witness would be required to travel regardless of whether the case proceeds in Philadelphia or Jacksonville, Florida.

The controlling reason for the Court's decision to transfer this case to the Middle District of Florida is that the Plaintiff, all the witnesses to any injuries, and all witnesses who would testify about Plaintiff's employment with CSX, are located in the Middle District of Florida. The convenience of the witnesses is a particularly significant factor, and in this case it weighs heavily

in favor of transfer. See Lindley, 93 F. Supp. 2d at 617.

In support of its Motion, Defendant has filed the Affidavits of David Hall and Sammy Kirby, both of whom are familiar with the Plaintiff's job duties, requirements and job safety training. Plaintiff does not dispute their Affidavits. The Court sees no reason why these individuals, and perhaps others who have personal knowledge of this matter, should have to travel to Philadelphia for discovery and trial.

This case has minimal connection to Pennsylvania. The Plaintiff neither lives nor works here, and most, if not all, of the operative facts occurred in the Jacksonville, Florida area. The convenience of the witnesses and parties, as well as the interests of justice, are best served by transferring this action to the Middle District of Florida.

An appropriate Order follows.

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	:	
CSX TRANSPORTATION, INC.	:	NO. 04-4518
	:	
Defendant.	:	

ORDER

AND NOW, this 23rd day of February 2005, for the reasons stated in the foregoing Memorandum, Defendant's Motion To Transfer Venue Pursuant To 28 U.S.C. 1404(a) (Docket No. 6) is GRANTED. The Clerk shall transfer this action to the Middle District of Florida.

BY THE COURT:

/s/ Michael M. Baylson _____
Michael M. Baylson, U.S.D.J.