

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

ROBERT DOMINY	:	CIVIL ACTION
	:	
v.	:	
	:	
CSX TRANSPORTATION, INC.	:	NO. 05-487
	:	
O'NEILL, J.	:	MARCH 9, 2006

MEMORANDUM

Plaintiff, Robert Dominy, filed an action in this Court against defendant, CSX Transportation, Inc., alleging violations of the Federal Employer's Liability Act ("FELA"). Before me now is defendant's motion to transfer venue and plaintiff's response.

BACKGROUND

Plaintiff Robert Dominy lives in Schenectady, New York, and works for CSX in Selkirk, New York. Dominy has worked his entire career for CSX in and around Selkirk. Both Schenectady and Selkirk are located in the Northern District of New York and over 240 miles from Philadelphia, Pennsylvania, where this court is located. Dominy has never been treated by any doctors in the Eastern District of Pennsylvania. CSX is a Virginia corporation that does business in Philadelphia, Pennsylvania; Selkirk, New York; and multiple other locations throughout the United States.

Dominy alleges that he suffers from carpal tunnel syndrome as a result of occupational trauma sustained while working within the scope of his employment with CSX. He alleges that the acts that caused his injuries were committed by the CSX, its agents, servants, workmen and/or employees acting in the course and scope of their employment with and under the direct control of CSX. Dominy further alleges that he was exposed to occupational risk factors for

carpal tunnel syndrome while working for the defendant.

CSX plans to call Dominy's supervisors and co-workers who are familiar with Dominy's job duties to testify at trial, including Daniel Puckett, who will testify to the working conditions and job requirements of Dominy's position. In an affidavit attached to CSX's motion to transfer, Puckett states that he would incur substantial expense and hardship should the trial continue in this district. Dominy lists multiple witnesses, including two from Philadelphia: Marsha Comstock, Conrail's former Medical Director and William Field, Conrail's former ergonomist. Dominy's other fact witnesses include a physician from Albany, New York, a New Jersey resident, an expert witness from Virginia, an expert witness from the Philadelphia suburbs, and two CSX employees who reside in Florida. Dominy's attorney's office is also located in Philadelphia.

DISCUSSION

I. Proper and Permissible Venues Under FELA

Under FELA, a plaintiff may bring an action in any district where the defendant is doing business at the time the action is brought. The statute provides that "an action may be brought in a District Court of the United States, in the District of the residence of the defendant, or in which the cause of action arose or in which the defendant shall be doing business at the time of commencing such action." 45 U.S.C. § 56. This provision grants an FELA plaintiff substantial discretion to select a forum of his choice. See Jordan v. Delaware & Hudson Railway Co., 590 F. Supp. 997, (E.D. Pa.1984). It does not, however, grant the plaintiff the undivided ability to preclude a forum transfer. See Shutte v. Armco Steel Corp., 431 F.2d 22, 25 (3d Cir. 1970) ("The decision to transfer is in the court's discretion, but a transfer is not to be liberally

granted.”) (citation omitted).

Dominy seems to argue that I should not transfer this case because venue transfer is against the plain language and fundamental purpose of 45 U.S.C. § 56. These arguments have been addressed and dismissed by the Supreme Court. See Ex parte Collett, 337 U.S. 55, 60 (1949). In that case, the Court has held that there is no conflict between the venue transfer statute, 28 U.S.C. § 1404(a), and Section 6 of the FELA, 45 U.S.C. § 56:

Section 6 of the Liability Act defines the proper forum, § 1404(a) of the Code deals with the right to transfer an action properly brought. The two sections deal with two separate and distinct problems. Section 1404(a) does not limit or otherwise modify any right granted in § 6 of the Liability Act or elsewhere to bring suit in a particular district. An action may still be brought in any court, state or federal, in which it might have been brought previously.

Collett, 337 U.S. at 60 (footnote omitted).

Further, federal courts have routinely transferred FELA cases to more appropriate fora. See, e.g., Luther v. Consolidated Rial Corp., 1999 WL 387075 (E.D. Pa. 1999); Jordan, 590 F. Supp. at 997; see also Jeter v. Consolidated Rail Corp., 1998 WL 175884 (E.D. Pa. 1998). Some courts have also denied transfer in FELA cases. See Richards .v Consolidated Rail Corp., 1994 WL 586009 (E.D. Pa. 1994). Each of these courts has balanced the interests of the parties, convenience of the witnesses, and other private and public factors to determine whether venue should be transferred, the same factors addressed in a non-FELA motion to transfer venue. See Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995). Transfer is no more restrictive in FELA cases than in any other civil action.

II. Section 1404(a) Motion to Transfer Venue

CSX argues that the balance of private and public factors weighs in favor of transferring

this case to the Northern District of New York. 28 U.S.C. § 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.” Both parties agree that the action could have been brought in either the Eastern District of Pennsylvania or the Northern District of New York.

The purpose of Section 1404(a) is “to prevent the waste of time, energy, and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense,” Van Dusen v. Barrack, 376 U.S. 612, 616 (1962) (internal quotations omitted), “not to shift the inconvenience from one party to the other.” Superior Precast, Inc. v. Safeco Ins. Co. of Am., 71 F. Supp. 2d 438, 446 (E.D. Pa. 1999). Although I have broad discretion to determine whether a transfer is warranted, a motion to transfer is not to be granted liberally. Stewart Org. v. Ricoh, Inc., 487 U.S. 22, 29 (1988). “It is black letter law that a plaintiff’s choice of a proper forum is a paramount consideration in any determination of a transfer request, and that choice should not be lightly disturbed.” Shutte, 431 F.2d at 25 (citation omitted). The moving party thus bears the burden of establishing that transfer is proper. In re United States, 273 F.3d 380, 388 (3d Cir. 2001). However, the moving party is not required to show truly compelling circumstances for change of venue, but rather that all relevant things considered the case would be better off transferred to another district. Id.

In deciding the present motion to transfer, I must consider “all relevant factors to determine whether on balance the litigation would more conveniently proceed and the interests be better served by transfer to a different forum.” Jumara, 55 F.3d at 878. I am guided in this inquiry by a nonexclusive list of private and public interest factors. Courts generally consider the

following private interest factors: (1) the plaintiff's choice of forum; (2) the defendant's preference; (3) where the claim arose; (4) the convenience of the parties; (5) the convenience of the witnesses, but only to the extent that the witnesses may actually be unavailable for trial in one of the fora; (6) the location of books and records, similarly limited to the extent that the files could not be produced in the alternative forum. See id. at 879-80. Courts similarly are guided by the following public interest factors: (a) the enforceability of the judgment; (b) practical considerations that could make the trial easy, expeditious, or inexpensive; (c) the relative court congestion in the competing courts; (d) the local interest in deciding local controversies at home; (e) the public policies of the fora; (f) and the familiarity of the trial judge with the applicable state law. See id.

A. Private Interest Factors

CSX argues that the balance of the private interest factors weighs in favor of transfer to the Northern District of New York because: (i) Dominy lived and worked in the Northern District of New York, (ii) the site of the alleged accident and injury was in the Northern District of New York, (iii) Plaintiff's medical records, physicians, co-workers, supervisors, and nearly all other potential witnesses and sources of proof are located in and around Selkirk, New York, in the Northern District of New York, and (iv) the vast majority of the fact witnesses would be required to miss work, travel over 240 miles, and pay for meals and lodging in Philadelphia. Dominy counters CSX's interference claims, arguing that CSX does business in Philadelphia, has the ability to require that its supervisors and employees attend trial, and that any inconvenience is de minimus.

Dominy filed this lawsuit in the Eastern District of Pennsylvania and would like the case

to remain in this district. CSX would prefer to litigate this case in the Northern District of New York. Plaintiff's choice of forum is generally a "paramount consideration in any determination of a transfer request, and that choice . . . should not be lightly disturbed." Jumara, 55 F.3d at 879-80. The preference accorded to plaintiff's choice of forum is diminished where the plaintiff does not choose his home forum and none of the operative facts occurred in the plaintiff's chosen venue. See Piper Aircraft Co. v. Reyno, 454 U.S. 235, 256 (1984); Zeevi v. Am. Home Prods. Corp., No. 99-20277, 2002 WL 92902, at *1 (E.D. Pa. Jan. 24, 2002) ("a plaintiff's choice of forum receives less weight where none of the operative facts occurred in the selected forum.") quoting Extraordinary Prods., Inc. v. Nationwide Mut. Ins. Co., No. 99-4305, 2000 WL 66157, at *2 (E.D. Pa. Jan. 24, 2000); Hillard v. Guidant Corp., 76 F. Supp. 2d 566, 569 (M.D. Pa. 1999) ("where none of the operative facts of the action occurred in the plaintiff's chosen forum, the choice is afforded less weight."); Sherwood Group, Inc. v. Rittereiser, No. 90-2414, 1990 WL 159925, at *3 (D.N.J. Oct 17, 1990) ("when the forum lacks contact with the transactions or conduct underlying the cause of action, the deference afforded to plaintiff's choice of forum is reduced."); Fitzgerald v. Central Gulf S.S. Corp., 292 F. Supp. 847, 849 (E.D. Pa. 1968) ("where none of the operative facts of the action occur in the forum selected by the plaintiff, his choice of that forum certainly is entitled to less weight than is ordinarily the case."). This factor weighs in favor of the plaintiff, but its influence is diminished because Philadelphia is neither Dominy's home nor the location where his injuries occurred.

The convenience of parties, witnesses, and the location of sources of proof weigh heavily in favor of transfer. Both parties agree that the actions and occurrences giving rise to this claim originated in New York. Plaintiff resides in New York and has most likely been treated for his

injuries by a doctor in New York. His medical records are probably in New York. The CSX work facilities, which could be visited by the jury should it become necessary, are located in Selkirk, New York. All of Dominy's coworkers and supervisors are located in New York. Two of Dominy's listed fact witnesses are located in Philadelphia, but the possible inconvenience to those witnesses is outweighed by the major inconvenience to all other witnesses in this case. While CSX does some business in Philadelphia, the activity at issue occurred in New York. These factors weigh heavily in favor of transfer.

Finally, the role of a Section 1404(a) transfer is not to shift the inconvenience from one party to another. See Dinterman v. Nationwide Mut. Ins. Co., 26 F. Supp. 2d 747, 749-50 (E.D. Pa. 1998) ("A court should not grant a transfer simply because the transferee court is more convenient for the defendants and therefore if the transfer would merely switch the inconvenience from defendant to plaintiff, the transfer should not be allowed."). Transferring the venue of this lawsuit, however, does not shift the inconvenience from defendant to plaintiff. The vast majority of the fact witnesses, both for plaintiff and defendant, are located in New York. One of Dominy's expert witnesses is located in the Philadelphia region, but as Dominy notes in his response, the trial testimony of the expert witnesses in this case will be most likely recorded at the expert witnesses' offices and played back for the jury. Dominy's lawyer is also located in Philadelphia, but this should not be a heavily weighed factor in the consideration. See Whigham v. CSX Transportation, Inc., 2005 WL 441356 (E.D. Pa. 2005). While Dominy may suffer some minor inconvenience with a transfer to the Northern District of New York, he will not need to travel to and stay in Philadelphia during the trial and he also be able to procure more easily witnesses and information for trial. This factor also is in favor of transfer.

B. Public Interest Factors¹

Public interest factors also favor a venue transfer to the Northern District of New York. CSX argues that the citizens of the Northern District of New York have a far stronger interest in this case than the citizens of the Eastern District of Pennsylvania because the alleged accident did not occur in Pennsylvania nor does Plaintiff reside here. Dominy argues that the citizens of the Eastern District of Pennsylvania are interest in the litigation because CSX runs its trains in and out of Philadelphia. I agree with CSX. The defendant is a member of the Northern District of New York community. The facility where the injury allegedly occurred, and where future injuries could occur to other citizens, is located in the Northern District of New York. Citizens of the Northern District of New York have a far greater interest in the outcome of this litigation than citizens in the Eastern District of Pennsylvania.

All relevant things considered, I find that this action should be transferred to the Northern District of New York. Convenience of the parties and witnesses, the availability of evidence, and public interest factors outweigh Dominy's preference for the Eastern District of Pennsylvania as its forum of choice. I will therefore transfer this case to the Northern District of New York.

An appropriate order follows.

¹This is not a diversity case and therefore the conflict of laws analyses neither support or preclude a venue transfer.

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CSX TRANSPORTATION, INC.	:	NO. 05-487

ORDER

AND NOW, this 9th day of March 2006, upon consideration of defendant's motion to transfer venue and plaintiff's response, it is ORDERED that defendant's motion is GRANTED. This action is TRANSFERRED to the United States District Court for the Northern District of New York.

s/ Thomas N. O'Neill, Jr.
THOMAS N. O'NEILL, JR, J.