

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

THOMAS WALSH : CIVIL ACTION
v. : 98-5576
WORLD AIRWAYS, INC., :

M E M O R A N D U M

Broderick, J.

November 25, 1998

Plaintiff Thomas Walsh, a citizen of Pennsylvania, brings this action alleging breach of an employment contract against Defendant World Airways, Inc., a Delaware Corporation headquartered in Herndon, Virginia. Defendant has filed a Motion, pursuant to 28 U.S.C. § 1404(a), to transfer the action for the convenience of the parties. For the reasons which follow, the Court will deny Defendant's Motion.

The relevant procedural history is as follows: Plaintiff Walsh filed the above-captioned action in the Middle District of Pennsylvania on September 26, 1997, claiming that it was wrongful for Defendant to terminate Walsh's employment after he failed an aircraft simulator evaluation. On December 29, 1997, Defendant World Airways filed a Motion to Dismiss on Grounds of Improper Venue, pursuant to 12(b)(3), or Alternatively for Transfer, pursuant to 28 U.S.C. § 1404(a), and Plaintiff opposed the motion. United States District Judge William J. Nealon ordered, after reconsideration, transfer of the case to the Eastern

District of Pennsylvania. Judge Nealon's July 2nd Order specifically noted that "defendant had conceded that venue would be proper in the Eastern District of Pennsylvania." Nevertheless, on November 12, 1998, Defendant filed the present Motion for Transfer pursuant to 28 U.S.C. § 1404(a) requesting this Court exercise its discretion to transfer the case to the Eastern District of Virginia.

In determining whether a transfer of action would be for the convenience of parties and witnesses and in the interest of justice, a federal district court is vested with wide discretion. Plum Tree, Inc., v. Stockment, 488 F.2d 754 (3d Cir. 1973). When deciding whether to order a discretionary transfer, the Third Circuit requires this Court to consider the private and public interests protected by the language of § 1404(a). Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995). The private interests include: plaintiff's forum preference as manifested in his 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 records, similarly limited to the extent that the files could not be produced in the alternative forum. Id. The public interests include: 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 a diversity case. Id. The burden of establishing the need for a transfer rests on the defendant. Id.

In ruling on defendant's motion to transfer, "the plaintiff's choice of venue should not be lightly disturbed." Jumara, 55 F.3d at 879. Plaintiff has clearly expressed a preference for a federal court located in Pennsylvania. Plaintiff is a citizen of Pennsylvania and suffered his damages in Pennsylvania. Defendant has conceded that venue is proper in the Eastern District of Pennsylvania and has not contested personal jurisdiction.

In considering the relative physical and financial conditions of the parties, Plaintiff claims that his limited financial means, the costs involved in retaining counsel, travel and lodging in Virginia would prevent him from pursuing the action and would require him to dismiss the complaint voluntarily. In contrast, Defendant is an apparently solvent and financially responsible corporation. While Defendant has indicated a preference for the Eastern District of Virginia as being more convenient for its witnesses and its documents, it does not contend that the witnesses and documents would be "unavailable for trial" here in the Eastern District of Pennsylvania. See Jumara, 55 F.3d at 879. Defendant's witnesses

are currently employed by the Defendant in the Eastern District of Virginia.

Finally, "practical considerations" mandate that the case proceed here in the Eastern District of Pennsylvania. This civil action was filed more than 14 months ago. Defendant has already argued for a § 1404(a) transfer to the Eastern District of Virginia before Judge Nealon in the Middle District of Pennsylvania. Judge Nealon, in his discretion, transferred this case to this district. This Court will not exercise its discretion to transfer the case to yet another forum. Such a transfer would result in only further delay and expense to the Plaintiff.

For the above reasons, the Defendant's Motion for Transfer pursuant to 29 U.S.C. § 1404(a) will be DENIED.

