

Case Name: Herald R. Gunder v CSX Transportation, Inc.

Date Decided: July 8th, 2009

Originally Filed in: Pennsylvania (Federal)

Decided by: Pennsylvania Eastern District Court (Federal)

Court: U.S.D.C. Eastern District of Pennsylvania

Judge: Judge Joyner

Citation: 2009 WL 2004377 (E.D.Pa.)

Background:

Plaintiff, Harold R. Gunder ("Gunder") filed suit against the defendants under the Federal Employees' Liability Act ("FELA"), the Federal Safety Appliance Act, and the Locomotive Inspection Act. Gunder alleges he was exposed to excessive and [cumulative trauma](#) to his arms and shoulders while performing his work. Gunder filed this action in the Eastern District of Pennsylvania. The Defendants have moved to transfer venue to the Northern District of Ohio, Toledo Division pursuant to 28 U.S.C. Â§1404(a).

Issue:

Should the court grant the defendants' Motion to Transfer Venue?

Overall Issues Discussed or Touched Upon in this Case:

- *Safety Appliance Act*
- *Boiler Inspection Act*
- *Venue Issues*
- *Cumulative Trauma Case*

Held:

Under Â§1404(a), a district court may transfer any civil action to any other district or division where it may have been brought for the convenience of the parties and witnesses. Furthermore, under FELA's venue provision 45 U.S.C. Â§56, such 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". A FELA plaintiff's choice of forum has been given great deference to the plaintiff's choice of forum. In cases brought under FELA, the plaintiff's choice of forum has been called a "substantial right" and requires notable deference notwithstanding plaintiff's residence or the location of the underlying cause of action. Thus, under claims filed by plaintiffs under FELA, the defendant must demonstrate a clear inconvenience, definitely and unequivocally, to be granted transfer. The court will balance private and public factors. The three most important private factors are, (1) convenience of the parties, (2) the location of the witnesses, and (3) whether the claim arose elsewhere. The Court found all three of these factors are in favor of granting the transfer. The plaintiff's employment for the defendant is

based in Toledo, Ohio all the witnesses reside in or around the Northern District of Ohio. Also, the location where the claim arose favors granting transfer. The plaintiff has admitted that he has never worked in the Pennsylvania area. The public factors considered by this Court are: (1) local interest in deciding local controversies, (2) practical considerations making the trial easier, and (3) court congestion. The plaintiff worked in the Northern District of Ohio so the district had a clear interest in the case. The proposed transfer district has a direct tie to the plaintiff's injury. The most persuasive consideration making the trial easier according to this Court, is that six of the potential witnesses are located in, or immediately outside, the proposed transfer district. Therefore, transfer would make the trial easier. Finally, the Pennsylvania District has nearly four times as many pending civil cases and fewer than twice as many judges than the Northern District of Ohio. Despite the substantial weight of the venue in which the plaintiff files under FELA, this Court found transfer to be appropriate in this action under FELA.

Comments:

Typically, the location of cause of action and home forum of the plaintiff controls a 1404 transfer motion. If the location of the injury did not occur in the district in which the plaintiff filed and the plaintiff does not live in the forum, then transfer will likely be found appropriate. However, under actions filed pursuant to FELA, the court will give notable deference to the plaintiff's choice notwithstanding the plaintiff's residence or the location of the underlying cause of action. Given this deference, the defendant has the burden to show that based upon public and private factors, transfer is appropriate. Here the defendant employer was able to clearly show that the private and public factors weighed in favor of transferring the case to the Northern District of Ohio, Toledo Division.

Steve Gordon