

Case Name: Robert Allen AST v. BNSF Railway Company

Date Decided: December 23rd, 2009

Originally Filed in: ()

Decided by: (State)

Court: U.S.D.C. Kansas

Judge: Judge Bostwick

Citation: 2009 WL 5210843 (D.Kan.)

Background:

Plaintiff, Robert Allen AST, filed this action under the Federal Employers' Liability Act, FELA, against defendant, BNSF Railway Company. BNSF has filed a Motion to Change Venue to transfer this action from Kansas to the Northern District of Texas. Allen alleged he sustained permanent, painful, disabling bodily injuries while working for BNSF. Allen further contended that he was attempting to operate a railroad switch which was defective and hard to throw and as a result, injuring himself. Allen further alleged that the switch was defective due to the negligence of BNSF.

Issue:

Did this Court grant BSNF's motion and transfer this action from Kansas to Texas?

Overall Issues Discussed or Touched Upon in this Case:

-

Held:

Allen asserted that the main-line switch, which he was injured on, is utilized by a crew based in Kansas and that any complaints regarding the switch in question would likely have been made to union representatives in Kansas. BNSF countered that it would be materially inconvenienced and incur substantial expense if the trial was held in Kansas City. BSNF argued that all if its records and witnesses are all located in Amarillo and Ft. Worth, while Allen is the only witness to the accident. Moreover, it asserted there are no Kansas City contacts or points of performance relative to the alleged negligence in this case. Moreover, BNSF pointed out that Allen is the only injury with direct knowledge of the even causing the injury and that he would be inconvenienced if the case were held in Kansas City so holding it in Texas would not greatly inconvenience Allen much more. Finally, BNSF further argued that Allen's medical witnesses can be offered by video deposition rather than in person and moving the trial to Armadillo, would create a significantly more net increase in ease, efficiency, and cost control than in Kansas City. Allen countered arguing that if his witnesses were called to Texas, they would be substantially inconvenienced by the change in venue. Moreover the majority of the FELA case will revolve around damages which 100% of the witnesses are located in Kansas. This Court considered various factors in determining whether to allow transfer. This included,

but was not limited to, the accessibility of the witnesses and other sources of proof, cost of making the necessary proof, the enforceability of a judgment if one is obtained, relative ease of trial efficiency, and upon the consideration of having a local court determine questions of local law. This Court found that BSNF failed to overcome the deference given to Allen's choice of forum and that Allen presented compelling arguments regarding the potential cost and inconvenience if the trial were relocated to Texas. This Court found no evidence that a Kansas forum would be a factor contributing to an unfair trial and accordingly, denied BNSF's motion to transfer venue.

Comments:

Under FELA actions, and most cases for that matter, the plaintiff's choice of venue will not be disturbed unless the balance of inconvenience strongly favors the moving party. Under FELA, venue is proper in the district of the residence of the defendants, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. Steve Gordon