Michigan Law Review

Volume 54 | Issue 2

1955

Federal Procedure - Venue - Interpretation of Section 1404(a) in Cases Arising Under the Federal Employers' Liability Act

Charles G. Williamson, Jr. S.Ed.
University of Michigan Law School

FEDERAL PROCEDURE—VENUE—INTERPRETATION OF SECTION 1404(a) IN CASES ARISING UNDER THE FEDERAL EMPLOYERS' LIABILITY ACT—Three petitioners instituted separate suits in the United States District Court for the Eastern District of Pennsylvania under the provisions of the Federal Employers' Liability Act,[1] for injuries received in the derailment of a train in South Carolina. The cases were transferred to the Eastern District of South Carolina under the provisions of section 1404(a), title 28, U.S.C.[2]

1 35 Stat. L. 65 (1908), 45 U.S.C. (1952) §§51-60.

2 The section 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 where it might have been brought."

Because of a court of appeals ruling that orders for transfer were not appealable,[3] petitioners sought mandamus to compel the district judge to set aside his orders for transfer. The court of appeals denied the applications. On certiorari to the United States Supreme Court, *held,* affirmed. Inasmuch as section 1404 (a) substituted transfer for dismissal, the harshest part of the doctrine of forum non conveniens was eliminated; thus the section was more than a mere codification of that doctrine. Its purpose was to permit transfers upon a lesser showing of inconvenience than the stringent requirements of forum non conveniens. *Norwood v. Kirkpatrick,* 349 U.S. 29, 75 S.Ct. 544 (1955).

Abuse of the venue provisions of the Federal Employers' Liability Act is notorious and has received ample discussion elsewhere.[4] Of the many corrective measures used in attempts to check this abuse,[5] the doctrine of forum non conveniens, where applied, has been singularly successful. Under the doctrine a court which properly has jurisdiction of a case may refuse to exercise it on the ground that a more convenient forum exists in which the plaintiff could have brought his action without vexation and harassment of the defendant.[6] Because of the harsh effects caused by dismissal of a case when the statute of limitations has run in the state of the more convenient forum, the application of the doctrine has met with limited acceptance in state courts.[7] The organization of the federal court system has made it possible to provide for transfer of a case rather than its outright dismissal, thus preserving the plaintiff's rights where the statute has run. The availability of the doctrine to curb the abuse of the FELA's liberal venue provisions in the federal courts was not definitely settled until *Ex parte Collett.*[8] In that case the phrase "any civil action" used in

3 All States Freight, Inc. v. Modarelli, (3d Cir. 1952) 196 F. (2d) 1010. The court in this case felt that to allow an appeal from the transfer order would result in additional delay, thus defeating the purpose of §1404 (a).

4 See the authority collected in 52 MICH. L. REV. 1211 at 1213, n. 15 (1954).

5 Measures which have been attempted and cases in which these measures were struck down are: injunction from bringing suit in an inconvenient state forum, invalidated in Miles v. Illinois Central R., 315 U.S. 698, 62 S.Ct. 827 (1942); injunction from bringing action in inconvenient federal forum, invalidated in Baltimore and Ohio R. v. Kepner, 314 U.S. 44, 62 S.Ct. 6 (1941); contracts with injured employers limiting venue to designated forums, invalidated in Boyd v. Grand Trunk Western R. Co., 338 U.S. 263, 70 S.Ct. 26 (1949). A legislative attempt to remedy the abuse of the venue provisions died in the Senate after being passed by the House of Representatives. H.R. 1639, 80th Cong., 1st sess. (1947). However, the new judicial code was before Congress at the time and it is possible that the Senate's action was based in part on recognition of the effect of §1404 (a). There is evidence that this possibility was brought to the attention of Congress. See S. Hearings before a Subcommittee of the Committee on the Judiciary on S. 1567 and H.R. 1639, 80th Cong., 2d sess., p. 111 (1948).

6 For detailed discussion of the doctrine, see Blair, "The Doctrine of Forum Non Conveniens in Anglo-American Law," 29 COL. L. REV. 1 (1929); Barrett, "The Doctrine of Forum Non Conveniens," 35 CALIF. L. REV. 380 (1947).

7 See Barrett, "The Doctrine of *Forum Non Conveniens,*" 35 CALIF. L. REV. 380 at 388 (1947), for a discussion of the scope of the doctrine as of 1947.

8 337 U.S. 55, 69 S.Ct. 944 (1949), noted in 48 MICH. L. REV. 366 (1950).

section 1404(a) was held to include actions brought under federal acts with special venue provisions. The decision in the instant case renders obsolete those prior interpretations of the federal doctrine of forum non conveniens which practically restricted changes of venue to those instances in which a forum was selected solely for the harassment of the defendant.[9] In the principal case the action was commenced in the home forum of one of the plaintiffs and within a short distance of the homes of the other two.[10] Nevertheless, transfer was ordered to the forum where the accident occurred and, most important, this was done on a lesser showing of inconvenience to the defendant than was previously thought acceptable.[11] This interpretation coupled with the *Collett* ruling should, so far as federal actions are concerned, fulfill a recognized need for a change in the venue provisions of the FELA.[12] The Supreme Court has announced that the interpretation of section 1404(a) can have no effect on the restrictions imposed by the federal judiciary on state court control of FELA actions.[13] The decision in the instant case may thus lead plaintiffs' attorneys to initiate FELA actions in state forums to a greater extent than in the past. However, the use of the doctrine of forum non conveniens by state courts in FELA cases has been sanctioned by the Supreme Court provided its application is not discriminatory.[14] Whether more states adopt the doctrine as a measure to control harassing actions brought under the FELA may well depend upon whether there is an increased burden upon local dockets caused by a tendency to divert such actions to state forums.

Charles G. Williamson, Jr., S.Ed.

[9] Prior to the principal case the standards generally thought to be applicable were those announced in Gulf Oil Corp. v. Gilbert, 330 U.S. 501 at 508, 67 S.Ct. 839 (1947) and Koster v. Lumbermens Mutual Casualty Co., 330 U.S. 518 at 524, 67 S.Ct. 828 (1947).

[10] Principal case at 54.

[11] See note 9 supra.

[12] See 52 MICH. L. REV. 1211 (1954). The decision in the principal case should also go far in restoring the original purpose of the special venue provision of the FELA. The provision was passed in 1910 to alleviate the injustice of compelling an employee to travel to the defendant's state of incorporation. 36 Stat. L. 291 (1910), 45 U.S.C. (1952) §56. On the history of the passage of the amendment, see Gibson, "The Venue Clause and Transportation of Lawsuits," 18 LAW AND CONTEM. PROB. 367 at 370 (1953).

[13] Pope v. Atlantic Coast Line R. Co., 345 U.S. 379, 73 S.Ct. 749 (1953), holding that the enactment of §1404(a) established a federal policy in favor of forum non conveniens, but in no way devitalized the decisions in Miles v. Illinois Central R., note 5 supra, and Baltimore and Ohio R. v. Kepner, note 5 supra.

[14] Douglas v. New Haven R. Co., 279 U.S. 377, 49 S.Ct. 355 (1929); Missouri ex rel. Southern Ry. Co. v. Mayfield, 340 U.S. 1, 71 S.Ct. 1 (1950).