

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
)
Joseph Dean,)
)
Plaintiff,)
)
v.)
)
CSX Transportation, Inc.,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
C.A. No.: 2020-CP-21-00958

ORDER
RECEIVED
Jul 16 2020
SC Court of Appeals

This matter is before the Court on CSX Transportation, Inc.’s (hereinafter “CSXT”) motion to dismiss Plaintiff’s Complaint pursuant to Rule 12(b)(2) of the South Carolina Rules of Civil Procedure for lack of personal jurisdiction. The Court conducted a hearing on the motion on May 26, 2020 via Webex, which was attended by counsel for all parties. Based upon the record before the Court and arguments of counsel, the Court finds that it lacks personal jurisdiction over CSXT in this case and hereby grants CSXT’s motion to dismiss and dismisses the case without prejudice for the reasons set forth below.

BACKGROUND

Plaintiff Joseph Dean brings this action pursuant to the Federal Employers’ Liability Act, 45 U.S.C. § 51, *et seq.* (“FELA”). Plaintiff alleges that while residing in Virginia and working for CSXT as a trainmaster assigned to CSXT’s Richmond, Virginia yard, he was injured at the yard on April 16, 2017 and then later that night in an automobile accident that also occurred in Virginia. Plaintiff claims that he recently moved to South Carolina, but admits at the time of the accident at issue he both lived and worked in Virginia. CSXT is a Virginia corporation with its principal place of business in Jacksonville, Florida.

CONCLUSION OF LAW

This is a case brought against a corporation incorporated in Virginia, seeking recovery under the FELA for alleged injuries that allegedly occurred in Virginia to an individual who resided in Virginia. The United States Supreme Court has recently considered the question of personal jurisdiction in a FELA case. In *BNSF Ry. Co. v. Tyrrell*, 137 S.Ct. 1549 (2017), like this case, the railroad was neither incorporated nor had its principal place of business in the forum state, the plaintiff's alleged injuries occurred in a non-forum state, and the plaintiff did not live or work in the forum state. In holding that personal jurisdiction did not exist, the Supreme Court stated: "the Fourteenth Amendment's Due Process Clause does not permit a State to hale an out of state corporation before its courts when the corporation is not "at home" in the forum state and the episode in suit occurred elsewhere". *Id.* at 1554. In fact, the Court held that the fact that the railroad had 2,000 employees in the forum state of Montana and over 2,000 miles of railroad track in Montana was not sufficient to establish personal jurisdiction because "BNSF, we repeat, is not incorporated in Montana and does not maintain its principal place of business there." *Id.* at 1559.

Despite this clear ruling in *Tyrrell* and its striking similarities to this case, Plaintiff contends that the Court can nonetheless exercise personal jurisdiction over CSXT in this case for Plaintiff's alleged injuries that occurred in Virginia while Plaintiff resided in Virginia. Plaintiff admits that CSXT is not "at home" in South Carolina and is not subject to all-purpose general jurisdiction in South Carolina. *See Tyrrell*, 137 S.Ct. at 1558 (describing "general jurisdiction" over a corporation existing "when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State"). However, Plaintiff

contends that CSXT is subject to “specific or case-linked” personal jurisdiction in this case. *BNSF Ry. Co. v. Tyrrell*, 137 S.Ct. 1549, 1558 (2017).

“‘Specific’ or ‘case-linked’ jurisdiction ‘depends on an ‘affiliatio[n] between the forum and the underlying controversy.’” *Walden v. Fiore*, 571 U.S. 277, 283 n.6 (2014); *see Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (holding that the specific jurisdiction analysis “is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction”). “When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant’s unconnected activities in the State.” *Bristol-Myers Squibb Co.*, 137 S.Ct. at 1781 (2017). To establish this connection, the specific jurisdiction analysis focuses on “if ‘the defendant has purposefully directed his activities at residents of the forum, and the litigation results from alleged injuries that arise out of or relate to those activities.’” *Fidrych v. Marriott International, Inc.*, 952 F.3d 124, 138 (4th Cir. 2020).

In arguing that the Court has specific personal jurisdiction over CSXT in this case, Plaintiff first states, “CSX maintains significant South Carolina contacts, including a division headquarters in Florence, two major rail yards, an intermodal terminal, over 1,800 miles of track, and approximately 1,000 employees.” *Id.* at 6-7. Plaintiff admits that these activities by CSXT do not make it subject to general personal jurisdiction in this State, as this is precisely the same type of argument rejected by *Tyrrell*. As “[f]or specific jurisdiction, a defendant’s general connections with the forum are not enough.” *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S.Ct. 1773, 1781 (2017). The Supreme Court has consistently held that “[a] corporation’s ‘continuous activity of some sorts within a state . . . is not enough to support the demand that the corporation be amenable to suits unrelated to that activity.’” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 927 (2011). For instance, in *Fidrych v. Marriott*

International, Inc., 952 F.3d 124 (4th Cir. 2020), the court found that Marriott was not subject to specific jurisdiction in South Carolina for an injury occurring in Italy even though Marriott had 90 hotels in South Carolina because the activities within South Carolina had “nothing to do with the claims asserted by the Plaintiffs in this action.” *Id.* at 139. Thus, the Court finds that the fact that CSXT has miles of track or over 1,000 employees within South Carolina cannot by itself subject CSXT to specific personal jurisdiction in this State.

Plaintiff also argues that before being assigned to live and work in Virginia, he worked in South Carolina and continued to work for the Florence Division when he worked in Virginia and occasionally traveled to South Carolina for meetings. Plaintiff argues that this case arises out of this “employer-employee relationship with CSX that always remained connected to South Carolina.” However, the Supreme Court has “consistently rejected attempts to satisfy the defendant-focused ‘minimum contacts’ inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State.” *Walden*, 571 U.S. at 284. “[A] defendant’s relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction.” *Id.* at 286. The Court finds that the fact that Plaintiff at one time was an employee of CSXT in South Carolina and worked for the Florence Division while he lived in Virginia and occasionally attended meetings in South Carolina unrelated to this particular accident do not allow the Court to exercise specific personal jurisdiction over CSXT.

Finally, Plaintiff argues that CSXT is subject to personal jurisdiction in South Carolina in this case based on the fact that not his direct supervisor, but his supervisor’s supervisor (Division Superintendent Larry Koster), allegedly was working in South Carolina at the time of the accident and allegedly instructed Plaintiff via a telephone call placed by Plaintiff to perform work in Virginia that Plaintiff claims led to his Virginia accident. Plaintiff provided an affidavit

to the Court that states in pertinent part as follows: “At the time of the derailment, my boss, the Terminal Manager, was on vacation or otherwise not working. Therefore **I reported** the derailment to the Division Manager, Larry Koster (who was my next higher up boss) as I am required to do.” Affidavit of Joseph Dean, par. 11 (emphasis added). Plaintiff argues that even though he lived and worked in Virginia and the accident and alleged injuries occurred in Virginia, this single phone he placed to Mr. Koster from Virginia is enough to subject CSXT to specific personal jurisdiction in South Carolina in this case.

There are several problems with Plaintiff’s argument. First, several courts have held that “interstate communications alone are not sufficient to confer jurisdiction.” *Bell Paper Box, Inc. v. Trans Western Polymers, Inc.*, 53 F.3d 920, 923 (8th Cir. 1995); *see Far West Capital, Inc. v. Towne*, 46 F.3d 1071, 1077 (10th Cir. 1995) (“It is well-established that phone calls and letters are not necessarily sufficient in themselves to establish minimum contacts.”); *Bolinske v. Herd*, 689 N.W. 397, 402 (N.D. 2004) (holding that “contacts consisting merely of long-distance telephone calls do not satisfy the minimal constitutional contacts required by due process”). In other words, “[t]elephone calls, email and telex messages, and letters do not form a basis for personal jurisdiction.” *DeCusati v. Reiss Engineering, Inc.*, C/A No. 3:15-cv-204-JAG, 2015 WL 4622494, at *3 (E.D.Va. July 30, 2015). These courts explain that “interstate communication is an almost inevitable accompaniment to doing business in the modern world, and cannot by itself be considered a ‘contact’ for justifying the exercise of personal jurisdiction.” *Cimmaron Corp. v. Smith*, 67 P.3d 258, 261 (Mont. 2003). In fact, courts in South Carolina have held that “[a] single phone call . . . is not sufficient to establish specific jurisdiction over a defendant.” *ScanSource, Inc. v. Mitel Networks Corp.*, C/A No. 6:11-cv-00382-GRA, 2011 WL 2550719, at *3 (D.S.C. June 24, 2011).

Additionally, the specific personal jurisdiction inquiry focuses on whether a non-resident defendant “‘purposefully directs’ his activities *toward* forum residents.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985) (emphasis added). Thus, the relevant inquiry is whether tortious activity was directed by the defendant toward an in-state South Carolina resident, not whether an allegedly in-state employee of a defendant directed activity towards an out-of-state resident and the accident and injury occurred out-of-state. For instance, in *Sonoco Products Co. v. ACE INA Ins.*, 877 F. Supp. 2d 398 (D.S.C. 2012), the plaintiff argued that the Court had specific jurisdiction over a Canadian insurer because the insurer had hired a South Carolina claims adjuster who wrote a letter in Columbia, SC indicating the denial of the claim by the insurer, which was “the event that set this litigation in motion.” *Id.* at 409. However, in the letter, the adjuster indicated “that relevant claim information was to be sent to Canada, notes that the loss at issue occurred in Canada, references investigations presumably performed in Canada, and explains that ACE INA is denying the claim.” *Id.* Thus, the court held:

This single correspondence from Mr. Sheets gives no indication that ACE INA directed any activities at South Carolina. To the extent this letter can be read to evidence a contact with South Carolina, the putative contact is not enough to make a *prima facie* showing that the contact was “so substantial that [it] amount to a surrogate . . . presence.”

Id.; see *Delta Apparel, Inc. v. Farina*, 406 S.C. 257, 750 S.E.2d 615 (Ct. App. 2013) (“While Farina may have spoken with officers that worked in the Greenville corporate office, there was no evidence to show Farina ever traveled to South Carolina for those conversations. Thus, Farina’s contacts do not establish that he would have reasonably expected to be haled into court in South Carolina, nor were the contacts sufficient for this State to fairly exercise personal jurisdiction over him.”); *Cribb v. Spatholt*, 382 S.C. 475, 486, 676 S.E.2d 706, 712 (Ct. App. 2009) (finding that a manager’s recruitment in South Carolina and purchasing of goods in South

Carolina for a job and work that would be completed in North Carolina was not sufficient to confer personal jurisdiction in South Carolina).

In fact, the specific personal jurisdiction inquiry's focus on whether a defendant directed a tortious activity "toward" a forum resident is consistent with South Carolina's longstanding interpretation of its long-arm statute. The long-arm statute states that "[a] court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's . . . commission of a tortious act in whole or in part in this State." S.C. Code Ann. § 36-2-803. The phrase "commission of a tortious act in whole or in part in this State" has been held as applying "to in-state injuries resulting from out-of-state acts or omissions." *International Mariculture Resources v. Grant*, 336 S.C. 434, 437, 520 S.E.2d 160, 162 (Ct. App. 1999). In fact, courts in other jurisdictions interpreting similar language have found that "when the 'tortious act' is not physically tangible, such as a telephone call, it is not the situs of where the telephone call was placed or received, but instead, the situs of where the resultant injury to Plaintiff was suffered." *Dickerson v. Perdue*, No. 07-CV-206 DRH, 2007 WL 2122418, at *4 (S.D. Ill. July 20, 2007).

Here, Plaintiff's argument regarding Mr. Koster misapplies the specific jurisdiction analysis and does not justify exercising specific jurisdiction over CSXT in this case. There is no evidence that anyone with CSXT purposefully directed any activities towards anyone in South Carolina or that anyone was injured in South Carolina, which is the forum state here. To the extent Mr. Koster directed anyone to do anything, his directions were to a citizen of Virginia, not South Carolina. To the extent any injuries occurred, they occurred in Virginia. As importantly, Plaintiff admits that it was he who directed the call from Virginia to Mr. Koster, who he claims was working in South Carolina. Plaintiff's phone call to Koster therefore does not constitute

tortious activity *by the defendant* directed at South Carolina as is required for the Court to exercise personal jurisdiction in this case. This single phone call made by Plaintiff from Virginia is simply too tenuous of a connection to comply with Due Process. As such, the Court further finds that any exercise of personal jurisdiction over CSXT in this case in South Carolina would be constitutionally unreasonable. *See Perdue Foods LLC v. BRF S.A.*, 814 F.3d 185, 189 (4th Cir. 2016) (stating that one prong of the personal jurisdiction analysis is “whether the exercise of personal jurisdiction would be constitutionally reasonable”).

Finally, the Court notes that by dismissing this case, the Court does not leave Plaintiff without a remedy. It is undisputed that Plaintiff has filed an identical action in Florida, where CSXT has its principal place of business. Under the circumstances of this case, the Court finds that this case should be dismissed without prejudice and the parties can litigate in Florida whether Virginia or Florida is the proper venue for Plaintiff to pursue his claims.

CONCLUSION

IT IS THEREFORE ORDERED that CSXT’s motion to dismiss is GRANTED. This case is hereby dismissed *without prejudice*.

IT IS SO ORDERED.

(ELECTRONIC SIGNATURE TO FOLLOW)



Florence Common Pleas

Case Caption: Joseph Dean VS Csx Transportation Inc

Case Number: 2020CP2100958

Type: Order/Other

So Ordered

s/ The Honorable Michael G. Nettles #2140