UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MIKEL BEE	**CIVIL ACTION**
VERSUS	**No. 22-2894**
CAMPBELL TRANSPORTATION COMPANY, INC.	**SECTION I**

ORDER AND REASONS

Before the Court is a motion[1] to transfer venue filed by defendant Campbell Transportation Company ("Campbell"). Plaintiff Mikel Bee ("Bee") opposes the motion.[2] For the following reasons, the Court grants the motion.

I. BACKGROUND

This matter arises under this Court's federal maritime jurisdiction.[3] Bee worked as a tankerman and deckhand aboard the M/V DUKE, a towing vessel owned and operated by Campbell.[4] Bee alleges that he was injured in the course of his employment with Campbell.[5] He asserts claims under the Jones Act, 46 U.S.C. § 30104 *et seq.*, and general maritime law.[6]

In connection with his employment, Bee signed a contract containing a "venue selection agreement" that states, in relevant part:

> I understand and agree that I have accepted a conditional offer of employment with Campbell Transportation Company (CTC), a company based in Houston, PA. located in Western Pennsylvania. . . . In consideration

[1] R. Doc. No. 25.
[2] R. Doc. No. 31.
[3] R. Doc. No. 1, ¶ 3.
[4] *Id.* ¶ 6.
[5] *Id.* ¶ 5.
[6] *Id.* ¶ 2.

> of my employment and possible additional benefits, in the event I elect to file a claim against CTC as a result of a work related injury or alleged injury, that claim may be filed only in the United States District Court for the Western District of Pennsylvania sitting in Pittsburgh, Pennsylvania.[7]

Despite this agreement, Bee filed the instant lawsuit in the Eastern District of Louisiana. Campbell now seeks an order from this Court enforcing the venue selection clause and transferring the matter to the Western District of Pennsylvania.

II. STANDARD OF LAW

Pursuant to 28 U.S.C. § 1404(a), a district court may transfer an action to any other district where the plaintiff could have filed suit "for the convenience of parties and witnesses" when the transfer is "in the interest of justice." "Section 1404(a) therefore provides a mechanism for enforcement of forum-selection clauses that point to a particular federal district." *Atl. Marine Constr. Co., v. U.S. Dist. Court*, 571 U.S. 49, 60 (2013).

When considering a motion to transfer venue pursuant to § 1404(a), courts consider a variety of public and private interest factors. *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 315 (5th Cir. 2008). The private interest factors are: (1) the relative ease of access to sources of proof; (2) the availability of compulsory process to secure the attendance of witnesses; (3) the cost of attendance for willing witnesses; and (4) all other practical problems that make trial of a case easy, expeditious and inexpensive. *Id.* The public interest factors are: (1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests

[7] R. Doc. No. 25-5, at 1.

decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws or in the application of foreign law. *Id.*

However, "[t]he presence of a valid forum-selection clause simplifies this analysis in two ways." *Id.* "First, the plaintiff's choice of forum merits no weight" because, by contracting for a specific forum, "the plaintiff has effectively exercised its 'venue privilege' before a dispute arises." *Atl. Marine*, 571 U.S. at 63. Second, the private-interest factors "weigh entirely in favor of the preselected forum," so that the "district court may consider arguments about public-interest factors only." *Id.* at 64. Thus, "a valid forum-selection clause controls the *forum non conveniens* inquiry '[i]n all but the most unusual cases.'" *Barnett v. DynCorp Int'l, LLC*, 831 F.3d 296, 300 (5th Cir. 2016) (citing *Atl. Marine*, 571 U.S. at 66) (alteration in original).

"The Fifth Circuit recognizes a distinction between mandatory and permissive forum selection clauses." *Chep Container & Pooling Sols., Inc. v. Pepper Source, Ltd.*, No. 20-01225, 2020 WL 12675645, at *4 (E.D. La. Dec. 17, 2020) (Milazzo, J.) (citing *Weber v. PACT XPP Techs., AG*, 811 F.3d 758, 768 (5th Cir. 2016)). "A mandatory FSC [forum selection clause] affirmatively requires that litigation arising from the contract be carried out in a given forum." *Weber*, 811 F.3d at 768 (alteration added). "By contrast, a permissive FSC is only a contractual waiver of personal-jurisdiction and venue objections if litigation is commenced in the specified forum." *Id.* "Only mandatory clauses justify transfer or dismissal." *Id.*

III. ANALYSIS

Bee does not dispute that he signed the venue-selection clause produced above, nor does he dispute that it is mandatory. He nevertheless raises several arguments against enforcement of that clause. The Court addresses each argument in turn.

a. Whether Forum Selection Clauses Are Enforceable in Jones Act Cases

Bee first argues that forum selection clauses are unenforceable in Jones Act cases such as his. Bee's argument relies on the Jones Act's relationship with the Federal Employers Liability Act ("FELA") and a distinction between the terms "forum" and "venue."

"[T]he Jones Act shares a body of law with [FELA]." *Brister v. ACBL River Operations LLC*, No. 17-6035, 2018 WL 746390, at *3 (E.D. La. Feb. 7, 2018) (Morgan, J.). Section 6 of FELA provides that a FELA plaintiff may bring a lawsuit "in the district where his employer resides, where the cause of action arose, or where his employer does business at the time the claim arose." *Great Lakes Dredge & Dock Co., LLC v. Larrisquitu*, No. 06-3489, 2007 WL 2330187, at *17 (S.D. Tex. Aug. 15, 2007) (citing 45 U.S.C. §§ 55, 56). The Supreme Court has held that this statute prohibits forum selection clauses in FELA cases. *Boyd v. Grand Trunk W. R.R. Co.*, 338 U.S. 263 (1949).

As Bee recognizes, the Fifth Circuit has held that the above-cited FELA provisions do not apply to the Jones Act. *Terrebonne v. K-Sea Transp. Corp.*, 477 F.3d 271, 282 (5th Cir. 2007). In *Terrebonne*, the Fifth Circuit reached this conclusion based on the fact that the Jones Act contained its own venue provision. *Id.* at 281.

The Jones Act was subsequently amended to remove that provision; nevertheless, Courts have continued to conclude that FELA's venue provisions do not apply to the Jones Act. *E.g.*, *Skoglund v. Procurement Servs. (Del.) Inc.*, No. 18-386, 2018 WL 6104907, at *2 (E.D. La. Nov. 20, 2018) (Lemelle, J.) ("Plaintiff's argument that this court should . . . incorporate the venue provisions of the FELA into the Jones Act is not convincing."); *Brister*, 2018 WL 746390, at *3 (rejecting the same argument).

However, Bee makes a distinction between "forum" and "venue," with "forum" referring to "a court or other judicial body; a place of jurisdiction," and "venue" meaning "the territory, such as a country or other political subdivision, over which a trial court has jurisdiction."[8] Bee argues that the clause in the contract "should be considered both a forum and venue selection clause, because the clause seeks to limit Mr. Bee's choice of both the adjudicative body [*i.e.*, requiring the lawsuit to be brought in federal court] and geographic location [*i.e.*, requiring the lawsuit to be brought in Pennsylvania]."[9]

Bee asserts that the proffered distinction between "forum" and "venue" "bears on the enforceability of the clause in question"[10] because forum selection clauses—as opposed to venue selection clauses—are allegedly unenforceable in Jones Act cases.[11] In light of the cases discussed above, Bee argues that "while the treatment of *venue* under the Jones Act prevents application of FELA's venue provision to a Jones Act

[8] R. Doc. No. 31, at 3 (quoting Black's Law Dictionary 725, 1695 (9th ed. 2009)).
[9] *Id.*
[10] *Id.* at 2.
[11] *Id.* at 4.

claim, it does not preclude incorporation of FELA's provision relating to *forum*."[12] Bee specifically relies on the fact that "Jones Act suits may not be removed from state court because 46 U.S.C. § 688 (the Jones Act) incorporates the general provisions of [FELA], including 28 U.S.C. § 1445(a), which in turn bars removal." *Lackey v. Atl. Richfield Co.*, 990 F.2d 202, 207 (5th Cir. 1993).

While interesting, Bee's argument finds little support in the case law. Bee cites no cases that have found a forum selection clause invalid under the Jones Act based on the proffered distinction between forum and venue.[13] Cases in this district have enforced forum selection clauses that restricted a Jones Act plaintiff to filing a lawsuit in a specific federal district, thereby prohibiting the plaintiff from filing a lawsuit in state court. *Brister*, 2018 WL 746390, at *1 (enforcing clause requiring that the lawsuit be brought only "in the U.S. District Court for the Southern District of Indiana, New Albany Division."); *Girdler v. Am. Com. Barge Line, LLC*, No. 17-6593, 2017 WL 6451750, at *2 (E.D. La. Dec. 18, 2017) (Africk, J.) (same). Moreover, Bee

[12] *Id.* at 6 (emphases added).

[13] Bee cites one unpublished case from the Southern District of Ohio that cited approvingly to an unpublished Alaska state court case that "differentiated between a forum selection clause and a venue selection clause under the Jones Act and concluded that the former, which addresses the particular forum in which jurisdiction is properly invoked, is unenforceable but that the latter, which selects the particular geographic location where suit may be brought, whether in state or federal court, is enforceable." *Edah v. Trident Seafoods Corp.*, 2007 WL 781899, 06-554, at *3 (S.D. Ohio Jan. 24, 2007). However, the clause at issue in *Edah* allowed the lawsuit to be brought in "the federal or state courts in King County, Washington," and therefore did not implicate the distinction. *Id.* at *1. Moreover, *Edah* cited the Alaska case as "persuasive" because it held "the specific venue selection clause at issue [in that case to be] enforceable even under the Jones Act." *Id.* at *3.

himself filed this lawsuit in federal court.[14] The bar on removability of Jones Act cases is therefore not implicated in this matter. For all these reasons, the Court rejects Bee's argument that forum selection clauses are invalid in Jones Act cases.

b. Whether the Clause Is Part of a Contract of Adhesion

Bee next argues that the relevant clause is part of a contract of adhesion because "it resulted from Campbell Transportation's overwhelming bargaining power."[15] "[I]n maritime actions" there are "four bases for concluding that a forum selection clause is unreasonable": it "was the product of fraud or overreaching," "the party seeking to escape enforcement will . . . be deprived of his day in court because of the grave inconvenience or unfairness of the selected forum," "the fundamental unfairness of the chosen law will deprive the plaintiff of a remedy" or "enforcement of the forum selection clause would contravene a strong public policy of the forum state." *Calix-Chacon v. Glob. Int'l Marine, Inc.*, 493 F.3d 507, 511 (5th Cir. 2007) (citing *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 12–13 (1972)) (further citations and quotations omitted).

Bee points to no specific circumstances that would render the forum selection clause invalid. He argues that he "was not in a position to negotiate the terms" and "[i]t was present[ed] to him on a take-it-or-leave[-]it basis." However, courts regularly reject such arguments in similar contexts. *Marinechance Shipping, Ltd. v. Sebastian*, 143 F.3d 216, 221 (5th Cir. 1998) (finding forum selection clause in seaman

[14] *See* R. Doc. No. 1.
[15] *Id.* at 7–8

employment contract enforceable, even while recognizing that "the seaman individually do not have much bargaining power").*Quinlan v. McDermott Int'l, Inc.*, No. 08-04192, 2010 WL 2836081, at *2 (E.D. La. July 16, 2010) (Berrigan, J.) (Jones Act case, rejecting plaintiff's argument that a forum-selection clause in an employment contract was invalid because plaintiff "did not have a meaningful choice in signing the agreement"). Accordingly, the Court concludes that the forum selection clause is not invalid due to the parties' unequal bargaining power.

c. Whether the Clause Lacks Consideration

Bee next argues that the clause lacks consideration.[16] Bee cites cases in which seamen signed post-injury forum selection clauses in exchange for post-injury benefits. *E.g.*, *Girdler*, 2017 WL 6451750, at *2 (pay continuance agreement); *Taylor v. Teco Barge Lines*, No. 06-6094, R. Doc. No. 28, at 17 (E.D. La. Feb. 12, 2008) (Duval, J.) (finding that a forum selection clause was not a product of fraud or overreaching when "plaintiff availed himself of [ ] optional post-injury benefits).[17] Here, in contrast, Bee signed the relevant agreement prior to beginning his employment with Campbell. Bee argues that the agreement he signed lacks consideration from Campbell because it states that it is "in consideration of my employment and *possible* additional benefits," making any obligation owed by Campbell illusory.[18]

[16] *Id.* at 8.
[17] As Campbell points out, none of the cases cited by Bee hold that consideration is *required* in order to make a valid forum selection agreement. However, as the Court concludes that the agreement was supported by consideration, this point need not be addressed.
[18] *Id.* at 10 (emphasis added by Bee).

However, as Campbell points out, Bee also signed an offer letter containing the wage and benefits provided in connection with his employment, which states that his employment was "contingent upon [Bee's] successful execution" of certain documents, including the "venue-selection agreement."[19] Accordingly, Bee received benefits in the form of employment wages and benefits in consideration for his signing the contract containing the forum selection clause.

d. Whether the Clause Violates Louisiana's Public Policy

Bee next argues that the clause violates Louisiana's public policy against forum selection clauses in employment contracts.[20] However, the Fifth Circuit has specifically recognized that the Louisiana public policy against such clauses does not overcome the federal policy in favor of such clauses. *See Lim v. Offshore Specialty Fabricators, Inc.*, 404 F.3d 898 (5th Cir. 2005); *Falk v. Marsh*, No. 12-1372, 2012 WL 13001817, at *5 (E.D. La. July 9, 2012) (Lemelle, J.) ("While Plaintiff is correct in asserting that Louisiana has expressed its distaste for forum selection clauses through statutory authority and judicial opinion, Plaintiff fails to recognize that the U.S. Supreme Court and the Fifth Circuit have continuously upheld forum selection clauses, thereby establishing a favorable federal policy toward them.").

e. Whether the Public Interest Factors Weigh Against Transfer

For the above reasons, the Court concludes that the forum selection clause is valid. Accordingly, the Court will consider only the public interest factors, *Atl.*

[19] R. Doc. No. 34-1, at 1.
[20] *Id.* at 10.

Marine, 571 U.S. at 63, and the clause should be enforced unless this is a "most unusual case[ ]." *Barnett*, 831 F.3d at 300.

Bee argues that two of the public interest factors applied pursuant to § 1404(a) weigh against transfer. Bee does not argue that administrative difficulties weigh against transfer or that there are potential conflicts of law issues. However, Bee does argue that this court's purported localized interest in the controversy and this district's familiarity with the applicable law weigh against transfer. *In re Volkswagen*, 545 F.3d at 315.

The Court concludes that this is not an unusual case where the public factors outweigh the interest in enforcing the forum selection clause. As to the localized interest argument, Campbell is based in the Western District of Pennsylvania, so that forum is not wholly unconnected to the instant matter. As to the familiarity with the law, this matter will be governed by federal maritime law. There is no reason why the Western District of Pennsylvania would be incapable of applying that law, as it is equally applicable across all federal districts. Bee has not shown that these factors "overwhelmingly disfavor a transfer." *Atl. Marine Constr. Co.*, 571 U.S. at 67. Accordingly, the Court concludes that this matter should be transferred pursuant to the mandatory forum selection clause.

IV. CONCLUSION

Accordingly,

IT IS HEREBY ORDERED that defendant's motion to transfer venue is **GRANTED**.

IT IS FURTHER ORDERED that this matter is **TRANSFERRED** to the U.S. District Court for the Western District of Pennsylvania.

New Orleans, Louisiana, April 10, 2023.

LANCE M. AFRICK
UNITED STATES DISTRICT JUDGE