ARBITRATION OPINION AND AWARD

BEFORE

ROBERT B. MOBERLY, ARBITRATOR

IN THE MATTER BETWEEN

BELLSOUTH TELECOMMUNICATIONS, INC
Employer

Grievance No. B15-ALL-001
Wire Techs—Pay Treatment
FULL ARBITRATION

And

COMMUNICATIONS WORKERS OF AMERICA
Union

REPRESENTATIVES

For the Employer: Steven T. Breaux, Esq., Executive Director – Senior Legal Counsel

For the Union: John L. Quinn, Esq., CWA District Counsel

Pursuant to the contract between the above parties, the undersigned was designated as Arbitrator in the above dispute. An arbitration hearing was conducted in Atlanta, Georgia, on May 4, 2016, at which time the parties were given full opportunity to present evidence and arguments. The proceedings were transcribed, and both parties submitted post-hearing briefs, the last of which was received on August 5, 2016.

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FACTS

BellSouth Telecommunications, LLC (hereinafter Company or BST) and the Communications Workers of America (hereinafter Union) have been parties to collective bargaining agreements for more than six decades. In 2006, AT&T purchased Bell South Corporation, which owned BellSouth Telecommunications.

The applicable collective bargaining agreement in this case (hereinafter CBA) was effective from August 5, 2012, through August 8, 2015. The CBA contained both a core BST Agreement and a U-Verse Field Operations Addendum (hereinafter Addendum). The Addendum covered newly-organized Wire Technicians, who install and maintain AT&T's U-Verse product in customer premises. The Addendum includes unique terms as well as provisions that incorporate specific provisions of the core BST Agreement. The term "core" BST Agreement in this opinion refers to all provisions but the Addendum.

During the term of this CBA, a dispute arose regarding the pay treatment of Wire Technicians promoted to jobs covered by the core BST Agreement. After a number of grievances were filed, the Union filed a grievance at the Executive Level of the grievance procedure. The grievance was processed without resolution and was appealed to the instant arbitration.

ISSUES

The Company states the issue as follows: "Whether the Company properly calculated the pay increase for a Wire Technician from the U-verse Addendum who was promoted to a job in the core bargaining agreement."

The Union States the issue as follows: "Did the Company violate Section 6.01 of the UFO Addendum with regard to the pay treatment of Wire Technicians promoted to jobs in the core agreement? If so, what shall the remedy be?"

The Arbitrator finds the issues to be as follows: Did the Company violate the CBA in its pay treatment of Wire Technicians promoted to jobs in the core BST agreement? If so, what should be the remedy?

PERTINENT CONTRACT PROVISIONS

ARTICLE 2
WAGES

2.06 Promotional Increases

Employees promoted from one job to another within the bargaining unit will be accorded the following pay treatment:

A. Promotional increases will be the higher of the start rate of the job to which promoted or 10% of the same step rate on the promoted-to-wage scale added to the current pay, rounded up to the next higher step of the promoted-to wage scale, not to exceed the maximum rate for the promoted-to job.

Example:

Office assistant on 24th month of WS 10, is promoted to a special assistant on WS 14

Current pay for WS 10, 24th month = $674.00
WS 14, 24th month $735.00 x 10% equals $73.50 (promotional increase)

$674.00 + $73.50 = $747.50 (proposed rate of pay)

The nearest higher step on WS 14 is the 30th month. The employee will be moved to this step at $784.00 and wage experience adjusted to provide the employee with 30 months wage experience.

…

ARTICLE 12
PROMOTIONS, TRANSFERS AND JOB VACANCIES

…

12.03 Promotional Increase Treatment.

When an employee within the bargaining unit is promoted to a higher–rated job within the bargaining unit, he/she shall receive at the time of promotion the applicable promotional wage treatment as set forth in 2.06.

…

NETWORK ADDENDUM FOR U-VERSE FIELD OPERATIONS

Section 1 – Application

1.01 ***Employees covered by the Network Addendum – U-verse Field Operations ("UFO") are governed by the terms and conditions contained in the Addendum and by the following provisions of the BST Agreement listed in 1.03 below.***

1.02 ***Applicable Job Title: Wire Technician.***

1.03 ***This Addendum contains the entire agreement between the Union and the Company with respect to Wire Technician in the UFO. The following provisions of the BST Agreement (unless specifically modified or excepted below) will apply: Articles 1.10, 11.02, 15, 16, 17, 20, 22, 23, 25, 26, 27, 28, 29, 30, 31, Appendix A Part I, Appendix A Part II, Appendix Part B Part I, Appendix B Part III, and the Benefit Agreement.***

1.04 ***Where conflicts may exist or arise between provisions of the Network Addendum -- UFO and those of the above referenced provisions of the BST Agreement, the provisions of the Network Addendum – UFO will prevail.***

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Section 6 – Force Adjustment

6.01 Transfer

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When an employee transfers to a higher or lower wage schedule the employee will move to the same wage schedule step on the new wage schedule that the employee was at on the old wage schedule. In addition, the employee's time spent, months and days, at the step on the old wage schedule will count towards the time required for the employee to progress to the next higher step on the new wage schedule.

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Section 10 –Force Movement of Employees.

10.01….

II. Treatment of Employees Who Voluntarily Move from a Wire Technician Title in the Network Addendum.

Regular full-time employees in the Wire Technician job titles are eligible to transfer to a position under the BST Agreement once they have reached at least thirty (30) months time in title (unless ways by the Company) and have satisfactory attendance and work performance, using the BST Article 12 transfer process. All requirements of the transfer process are applicable for such transfers, including, but not limited to, eligibility requirements, in addition to any additional eligibility requirements provided for under this Addendum.

POSITION OF THE COMPANY

The Company contends that the Union has the burden of proving that the Company violated the U-verse Addendum when calculating pay for promoted Wire Technicians; that the Union must show that its interpretation is the "sole correct one;" that the Union has failed to meet its burden; and that the Union cannot prove that the Company must provide wire technicians with "a windfall pay increase and ignore a provision directly addressing their pay calculation upon promotion to the core technician job."

The Company further contends that the Addendum provides two ways to calculate pay raises, one general about moves from one position to another, and the other specific that addresses how to pay a Wire Tech who voluntarily moves out of the Addendum and into the core; that the bargaining history explains why there are two provisions and which applies to Wire Technicians promoted to a core technician job; that the Company raised the Midwest U-verse appendix, which includes three titles and two pay calculation provisions, one for movement between appendix titles and another for movement from the appendix to the core; that although the parties agreed to have only one title, Wire Technician, they retained the two pay calculation provisions; that this explains why there are two pay calculations in the Addendum and which should apply to a Wire Technician promoted to a core technician title; and that this bargaining history also informs what 6.01 exists to accomplish and why it does not apply to Wire Technicians promoted to the core.

The Company further argues that contract interpretation principles support the Company position. It states that the specific controls the general; that one provision generally addresses movement between jobs, and the second specifically addresses "Treatment of Employees Who Voluntarily Move From a Wire Technician Title in the Network Addendum;" that the specific provision requires that Article 12, which incorporates the 2.06 calculation, applies to Wire

Technicians who move to another bargaining unit job, all of which are outside the Addendum; that the Union specifically acknowledged this process in its ballot communications to the bargaining unit ahead of the vote; and that more specific provisions restrict the general.

The Company also cites the contract principle that a contract should be read so that all provisions have some meaning; that applying the general provision in 6.01 would require reading the specific provision out of the contract; that if the general provision for Wire Technicians "Who Voluntarily Move" does not apply here, it would apply nowhere; and that the general provision in 6.01 is not meaningless because it would apply to intra-Addendum moves should other titles be added to the Addendum.

Finally, the Company cites the contract interpretation principle the "a reading should not result in an anomaly or absurd result." It argues that if the general 6.01 provision applies, more senior, higher-rated employees would earn less upon promotion than the less senior, lower –paid Wire Technicians upon promotion to the same job. Such results, argues the Company, would lead to harsh, absurd and nonsensical results.

For the reasons stated above, the Company requests that the grievance be denied.

POSITION OF THE UNION

With respect to burden of proof, the Union argues that it has established a prima facie case supporting its position; that it has proved its interpretation is correct, applying the plain meaning of the contract's express terms; that the Company's argument is that the Addendum does not really mean what it says; that such a departure from the plain meaning rule is akin to an affirmative defense; and that as such, the Company must bear the burden of proving this exception to a well-established rule.

With respect to what the agreement says, the Union notes that the Addendum covers only Wire Technicians and their conditions of employment, except for enumerated provisions of the BST Agreement; that the Addendum applies if there are any conflicts with the BST Agreement; that 6.01 states that when a Wire Technician transfers to another job they will move to the same wage schedule step on their new wage schedule; that if 6.01 applies to transfers within the Addendum, it makes no sense because there is no other job or wage scale in the Addendum; that Section 10.01 II specifies only that the **process** (emphasis included) to be used in transferring Wire Technicians to BST positions is in BST Article 12, and does not refer to the pay treatment of transferring Wire Technicians; and that the only reference to the pay treatment for transferring wire technicians in the Addendum is in 6.01.

In response to the Company contentions, the Union argues that Article 12, Section 12.03, and Article 2, Section 2.06, are not incorporated into the Addendum, and so the written terms of the parties' agreement do not support the Company argument.

With respect to the Company argument that its interpretation is consistent with how AT&T Midwest interprets its contract in a different bargaining unit, the Union states that the Midwest contract is a different agreement; that the Midwestern contract is not what was agreed to with District 3; and that the practice of the parties to the Midwestern contract have no evidentiary value in interpreting the District 3/BST Agreement.

The Union further argues that in order to look behind the plain meaning of words, there must be some ambiguity to be resolved; that no ambiguity exists here; that even if there was ambiguity, nothing in the bargaining history supports the Company position; that no contemporary bargaining notes were introduced; and that the Company did not get an agreement like the Midwest contract.

For the reasons stated above, the Union submits that the Company violated Section 6.01 of the Addendum by handling the pay treatment of transferring Wire Technicians under Article 12, Section 2.06 of the core BST agreement.

DISCUSSION

The facts are not largely in dispute. The issue is one primarily of contract interpretation. Should the pay of Wire Technicians who voluntarily move to a position under the core BST Agreement be governed, as the Company contends, by Addendum 10.01 II ("Treatment of Employees Who Voluntarily Move from a Wire Technician Title in the Network Addendum") and BST Agreement Article 12 ("Promotions, Transfers and Job Vacancies"), including 2.06 ("Promotional Increases")? Or, as the Union contends, should such pay be governed by Addendum Section 6.01 ("Transfer")?

Upon a full consideration of the evidence and arguments, the Arbitrator concludes that the Company has the stronger argument, based on an analysis of the contract language taken as a whole. All three of the provisions relied upon by the Company specifically address a Wire Technician who voluntarily moves to another position in the core BST Agreement. Addendum 10.01 II applies to Wire Technicians alone, and it specifically states that such employees will use the Article 12 transfer process contained in the core BST Agreement. The Union contends that this refers only to process, not pay. However, any transfer process ordinarily would include determining the new pay scale of the transferred employee.

Similarly, Article 12, by its title, specifically refers to promotions and transfers, which is what happens when a Wire Technician voluntarily moves to another position in the core BST Agreement. Section 12.03 then comes into play, which states that employees promoted to a higher-rated job (again which is what happens when a Wire Technician voluntarily moves to another

position) shall receive the "wage treatment as set forth in 2.06." Thus Section 2.06 is the applicable provision for Wire Technicians who voluntarily move to another position. Section 2.06 states that "promotional increases will be the higher of the start rate of the job to which promoted or 10% of the same step rate on the promoted-to-wage scale, not to exceed the maximum rate for the promoted-to job."

The Union contends that the applicable provision is Section 6 ("Force Adjustment") in the Addendum, specifically 6.01 ("Transfer"), which states that an employee who transfers to a higher or lower wage schedule "will move to the same wage schedule step on the new wage schedule that the employee was at on the old wage schedule." The Arbitrator has carefully considered this argument, as well as the Company argument that this would apply to intra-Addendum moves should other titles be added to the Addendum.

It seems to the Arbitrator that the primary question is which provision of the addendum, Section 10.01 II (and its reference to Article 12) or Section 6.01, should apply to Wire Technicians who voluntarily move to a position in the core BST agreement. Because Section 10.01 II specifically refers to such Wire Technicians, the Arbitrator concludes that this section of the Addendum, which expressly incorporates "the BST Article 12 transfer process," must be considered the determinative provision in setting the pay of such employees. And, as discussed above, under Article 12, Section 2.06 is the governing provision in setting such pay.

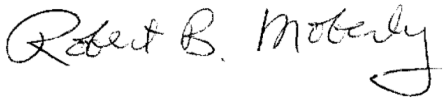
The Union further argues that under Section 1.04 of the Addendum, when conflicts exist between the Addendum and the core BST Agreement, the provisions of the addendum will prevail. However, in this case, the question is which of two *Addendum* provisions will prevail (Section 10.01 II or section 6.01). As noted above, the Addendum Section 10.01 II incorporates part of the BST Agreement, the Article 12 transfer process. However, that does not remove Addendum

Section 10.01 II as the basic provision governing the "Treatment of Employees Who Voluntarily Move from a Wire Technician Title in the Network Addendum." Accordingly, since the argument is over two Addendum sections, there is no conflict between the Addendum and the core BST Agreement.

In light of the above discussion, and after full consideration of the evidence and arguments, the Arbitrator finds that the Company did not violate the CBA in its pay treatment of Wire Technicians promoted to jobs in the core BST agreement. Accordingly, the grievance must be denied.

AWARD

The Grievance is denied.



Robert B. Moberly, Arbitrator
October 19, 2016