

IN THE MATTER OF THE ARBITRATION
BETWEEN
BELLSOUTH TELECOMMUNICATIONS, LLC
(Company)
and
COMMUNICATION WORKERS OF AMERICA
(Union)
GRIEVANCE NO. B17-052-3608 (WIRE TECHS)
FULL ARBITRATION

The hearing was held on March 7, 2019, in a conference room at the Courtyard by Marriott in Atlanta, Georgia, before James J. Odom, Jr., Arbitrator.

APPEARANCES

For the Company:

Steven Breaux, Esq.
AT&T Southeast Legal Department
675 W. Peachtree St., NW, Suite 4300
Atlanta, GA 30308

For the Union:

Robert M. Weaver, Esq.
Quinn, Connor, Weaver, Davies & Rouco, LLP
3516 Covington Highway
Decatur, GA 30032

INTRODUCTION

BellSouth Telecommunications, LLC (“Bellsouth” or “Company”), an operating company of AT&T, serves the southeastern United States. Communications Workers of America (“CWA” or “Union”) is the bargaining representative for the employees of the Company who install and maintain the equipment and facilities required to provide the Company’s product, telecommunication services.

BellSouth and CWA are parties to a Collective Bargaining Agreement (“Contract” or “Agreement”) that provides for the arbitration of disputes over the application of its terms. The parties’ disagreement in this arbitration concerns the scope of the work of Wire Technicians—specifically whether the Contract permits the work in question to be performed by Wire Technicians, or whether it requires the work to be performed exclusively by Service Technicians.

BACKGROUND

In November 2017, a Morganton, North Carolina fire station reported a telephone line out of order. The Service Technician that was dispatched to restore service [plain old telephone service (“POTS”)] discovered that the problem with the fire station’s telephone resulted from work done by a Wire Technician on a different customer’s service when he was dispatched to install internet services [Internet Protocol “IP”]. The Wire Technician had been sent specifically to perform a “Line Station Transfer” of the fire station’s POTS line at a nearby service terminal. As instructed, he had (1) moved the fire station’s POTS line from its assigned cable pair to the serving terminal in order to free up that cable pair for the IP customer; (2) moved the fire station’s service to a different cable pair; and then (3) used the cable pair taken from the fire station’s circuit to connect the new internet customer’s service.

The Union contended in its November 1, 2017 grievance, that in assigning a Wire Technician to perform this work for the fire station, the Company had violated the contractual terms of Scope of the Work for Wire Technicians. Wire Technicians, it maintained, can perform work on POTS service only if they are already dispatched to the customer's premises for IP*service. The Company denied the grievance.

Following unsuccessful attempts to resolve their dispute through negotiation, the parties referred the grievance to arbitration in accordance with Article 23, "Arbitration, Expedited Arbitration and Mediation" of the Agreement. The undersigned was appointed Arbitrator, and a hearing was held in a conference room at the Courtyard by Marriott in Atlanta, Georgia on March 7, 2019. Post hearing briefs were timely filed, and the hearing declared closed on June 10, 2019.

POSITIONS OF THE PARTIES

UNION

Work that touches either the copper cable circuit or the fiber optic cable circuit is reserved by contract to be performed by the employees in job classifications such as Service Technician and Facility Technician. Permitted assignments of these tasks to Wire Technicians are carefully carved out and delineated in Article 14. Unless such an assignment exception is explicitly carved out in Article 14, the assignment constitutes a violation. This case involves the task of a "*pair change*," a job or assignment which Article 14 does expressly designate as an exception. The case also involves a task or procedure called a "*Line Station Transfer*." In an attempt to qualify for the bargained-for exception, the Company argues that a Line Station Transfer is a pair change. It is not.

A Line Station Transfer is different from a pair change in that it requires the technician to touch the circuits of two different customers—to move one customer's circuit from its existing facilities [e.g.,

a cable pair at the serving terminal] in order to free up those facilities for a different customer's service. The critical distinction between a pair change and Line Station Transfer is that a pair change involves moving *only one* customer from its existing cable pair to a vacant cable pair to effect a repair for that same customer, whereas a Line Station Transfer involves moving the facilities of one customer in order to free up those facilities *for a different customer*. For a Line Station Transfer there is no vacant pair available for the technician to use, so the technician moves one customer to free up those facilities for another customer—taking one customer's facilities and moving it to another customer's facilities for the new customer. Simply put, he unhooks one customer and plugs in another.

The Issue of the Issue. The Company suggested that the issue in this case is whether Wire Technicians can perform a Line Station Transfer incident to providing U-Verse service (IP-based or digital service) to the customer. CWA countered that the issue is whether a Wire Technician can perform a Line Station Transfer in POTS [i.e., on traditional landline telephone service]. Both the grievance and testimony make clear that the issue involves a Wire Technician actually performing a Line Station Transfer on a landline POTS customer's service. Therefore, the issue is not the assignment of a Wire Technician to perform work for a U-Verse customer.

What gave rise to the grievance was that a Wire Technician performed a Line Station Transfer on the service of a landline customer to whom he had not been dispatched, and on whose service he was not assigned work. Thus, the issue should be whether a Wire Technician can perform a Line Station Transfer in POTS. And the answer is that he cannot.

In 2015, the Company proposed and CWA agreed to expand the scope of Wire Technician work to allow pair changes and port swaps. Restrictions on Wire Technicians performing work on POTS service were not removed—meaning that the restrictions on work from the serving terminal to

the customer's premises remained in place, unless the Wire Technician had been dispatched to the customer's premises to work on IP-based services. The parties discussed Line Station Transfers during 2015 and agreed Wire Technicians could perform them on IP-based services, but not on POTS customers except as specifically agreed in the amended Scope of Work.

In the fire station incident, the Wire Technician's instructions were to perform a Line Station Transfer at a nearby serving terminal, that is, (1) move the fire station's POTS line from its assigned cable pair in the serving terminal in order to free up that cable pair for the new IP customer; (2) move the fire station's service to a different cable pair; and then (3) use the cable pair taken from the fire station's circuit to connect the new internet customer's service. This was not a simple pair change because he was to move the service of one customer to a different cable pair in order to make room for the second customer (the new internet customer) and not simply moving his internet customer from one cable pair to a vacant cable pair.

Argument/Issue. Has the Company proven an exception to the core bargaining unit's exclusive jurisdiction over the work on telecommunications circuit established by Article 14? The question comes down to whether the assignment of the task of a Line Station Transfer for a POTS customer comes within an exception to Article 14. And the answer is that it does not.

The scope of change sought and obtained by the Company in 2015 negotiations was explicit: Additions of being able to work on fiber, do pair changes and perform port swaps. Unless dispatched to an internet-based customer's premises to work on that customer's internet-based products and services, the Wire Technician cannot work on that customer's internet-based products and services, and the Wire Technician cannot work on another customer's landline POTS service.

Summary of facts of case: The assignment of a Wire Technician to install an IP-based product for a U-Verse customer and to perform a Line Station Transfer on a different customer's landline POTS service at a different location. Wire Technician was assigned to unhook fire station's POTS line and move it to another cabled pair so as to free up that available pair for his internet customer. This work was excluded from the Wire Tech Agreement because it involved work on a different customer's POTS circuit at a different location than that of the Wire Technician's internet customer.

COMPANY

The issue in this case is whether Wire Technicians can perform a Line Station Transfer incidental to providing U-Verse service to customers. The parties have had two series of negotiations addressing the work Wire Technicians can perform. In the end the Company agreed that it would not use Wire Technicians to install, maintain and provision POTS service for its landline customers. But it insisted that when a Wire Technician was dispatched to install or maintain U-Verse service, the Wire Technician could do that work as part of the U-Verse work and help provide that service.

The resulting contract, Scope of Work For Wire Technician, provides that Wire Technicians can perform Pair Changes "regardless of the technology or equipment involved." Scope of Work was written to address the Union's concern that Wire Technicians' work focus on U-Verse, and that it not erode traditional technicians' work on POTS. Thus, while Scope of Work provides that Wire Technicians may perform "All work at or in the customer premises," it excepts POTS work outside the NID, which would mean that Wire Technicians could not work on POTS service at the Serving Terminal. However, Scope of Work adds an exception to the exception. Wire Technicians can work on POTS outside the NID (i.e., at the Serving Terminal) "if already dispatched to the premises for U-Verse Work."

Thus, the CBA specifically allows Wire Technicians to perform Pair Changes, and generally allows POTS work at the Serving Terminal while dispatched on a U-Verse service order. In addition to the express contract language, the bargaining history specifically addressed this situation, and the Union agreed that Wire Technicians can perform Line Station Transfers. In the job at issue in this arbitration, the Wire Technician was dispatched to provide U-Verse service. He dutifully performed the Line Station Transfer for the POTS customer, the fire station, in order to provide the U-Verse service at the premises he was dispatched to. That is what is encompassed by the language in the Agreement.

Union's Burden to Prove Company's Actions Violated Agreement. In 2015, the Union and Company specifically agreed that Wire Technicians can perform "Pair Changes," and they can do so "regardless of the technology or equipment involved." They also agreed that Wire Technicians can perform "any" of the disputed work, "from and including the serving terminal, if already dispatched to the premises for "U-Verse work."

The dispute arises because the Union argues that when dispatched to work on a U-Verse customer, a Wire Technician cannot perform a pair change on a POTS customer to free up a line for the U-Verse customer, that the Company must roll two trucks and send a different technician out to the customer location for the sole purpose of making a pair change to move the POTS customer from one binding post to another, even though no repair, install or maintenance is needed for that POTS customer. Then, and only then, according to the Union, can the Company send a Wire Technician out to perform the second pair change and install the U-Verse service for the original U-Verse customer. The Union's approach would necessitate at least two truck rolls. The Union's theory violates (1) the

express language of the CBA; (2) its commitments in the negotiating meetings; and (3) the overall purpose of the deal.

First, the Contract specifically allows Wire Technicians to perform pair changes regardless of the technology on equipment involved. A pair change means to move a customer's service from one copper pair in the cable to another copper pair in the cable, which requires running a jumper at the cross-box and moving a drop at the serving terminal from one binding post to another. That is how a technician changes a pair and accomplishes a Pair Change.

The CBA does not limit a Wire Technician to a single pair change per order. Indeed, the language is in the plural, "Pair Changes." A Line Station Transfer amounts to nothing more than multiple pair changes. The Union admitted a Wire Technician can perform a Line Station Transfer if the service for both customers involved were U-Verse. Scope of Work does not separately mention Line Station Transfers by name. So a Wire Technician's ability to perform LSTs has to be encompassed within the Pair Changes language. This takes into account the Union submission of documents defining Line Station Transfers as "basically pair changes." There can be no doubt that the Contract language for "Pair Changes" encompasses Line Station Transfers.

If the language were not clear, the Union cleared it up during negotiations. CWA tried to have the word "simple" inserted before "Pair Changes," which caused questions and answers between the negotiators. Both sets of notes indicated the issue was making sure to restrict the Wire Technicians from "going into" the cable itself, and restricting the work to the binding post. The Company's notes, which are longer and provide more detail, specifically recognize that the union's spokesperson said the Wire Technicians could, "Place, remove, repair and rearrange the drops at the serving terminal." That explanation of what the Union wanted to call "simple" pair changes—meaning "rearrange the drops at

the serving terminal—defines a Line Station Transfer. Let there be no doubt: the CBA language and the Union's representations at the table provided that Wire Technicians can perform Line Station Transfers when dispatched on a U-Verse install.

The CBA prevents the Wire Technicians generally from performing POTS work, but they "may, however, perform any of this work from and including the serving terminal up to and including the customer premises if already dispatched to the premises for the U-Verse work." That allows the Wire Technician to perform a pair change on the POTS customer to vacate the pair for the U-Verse customer seeking installation of that U-Verse. The language is plain, and it protects the work CWA wanted to protect while at the same time accomplishing the Company's goal of a single truck roll. There was no violation of Scope of Work for Wire Technician, and Union failed in its burden. The grievance should be denied.

PERTINENT PROVISIONS OF THE CONTRACT

Article 14 JURISDICTION OF WORK

14.01 Contract Work.

- A. The Company agrees to use only Company employees on work involving construction, maintenance, removal and/or repair of the following types of plant:
1. All aerial outside plant except that on which such work may be performed by unskilled or occasional labor working on the ground rather than aloft.
 2. Underground cable and splicing of buried cable.
 3. Submarine cable except where such work requires the use of boats, barges, water-borne or other special equipment not normally used by the Company.

4. Local and toll central office, TWX, TLX, private line or station equipment which constitutes any part of a communication circuit except work on such plant done by a connecting company on plant located in its territory.

Notwithstanding the above, the Company will not contract the maintenance or repair of such telephone plant located in the territory of a connecting company where the Company is now doing such work by employees now stationed or may subsequently be stationed in the territory of the connecting company.

5. Nothing in 14.01 is to be interpreted as restricting the right of the Company to use contractors' labor to perform any work under "2" and "3" above which can be done by unskilled or occasional employees. Neither is it intended to prevent the Company from contracting out the type of work which was normally performed by the Western Electric Company and the Long Lines Department of American Telephone and Telegraph Company prior to the divestiture of the Southern Bell Telephone and Telegraph Company and South Central Bell Telephone Company from the American Telephone and Telegraph Company.
6. Nothing in 14.01 is to be interpreted as restricting the right of the Company to contract out any work during an emergency or to allow subscribers to remove the instruments from their premises if such removal can be effected without the use of telephone craft skills. Emergency work includes the clearing of trouble and the accompanying repair of any plant located in the territory of a connecting company.

- B. The Company further agrees that in the carrying out of its program of construction, removal, maintenance and/or repair of telephone plant it will not contract any work which would make it necessary to lay off or part-time any regular or temporary employee of the Company.

NETWORK ADDENDUM
U-VERSE FIELD OPERATIONS

SCOPE OF WORK FOR WIRE TECHNICIAN

The Wire Technician will perform all work at the customer premises up to the Network Interface Device (NID) or equivalent. This work will include but is not limited to all inside wiring, CPE equipment - including VoIP, **Direct Broadcast Satellite (DBS)**, testing, sales, customer instruction on equipment, etc. for all services regardless of the technology or equipment involved.

In addition to the current job duties performed by Wire Technicians, the Company *may* assign the Wire Technician, regardless of the technology or equipment involved, to:

....

c. *Pair Changes*

....

f. All work at or in the customer premises for all services except:

- Installation and maintenance work for TDM enabled voice services (POTS), outside the NID.
- Initial installation work for ATM enabled DSL service, outside the NID.
- ATM enabled DSL service repair or maintenance, outside the NID.

....

A Wire Technician may, however, perform any of this work from and including the serving terminal up to and including the customer premises if already dispatched to the premises for work not identified in bullets above.

ISSUE

Whether, under Article 14 and Scope of Work for Wire Technician, a Wire Technician may perform a Line Station Transfer on the landline service of a landline customer to whom the Wire Technician had not been dispatched or assigned to work on that customer's service?

DISCUSSION

CWA took the position early in its opening statement that the Company ultimately bears the burden of proof to establish that the work assignment in question did not violate the parties' work jurisdiction agreement. Picking up the point in its brief, CWA argued that it is a principle of arbitral jurisprudence that the party asserting a proposition bears the burden of proving it. That proposition

is the Company's defense to CWA's charge of breach of jurisdiction over the work in question, namely, the express claim that the disputed work fell within an exception that permitted a Wire Technician to perform it. The bottom line, according to CWA, is that once a *prima facie* case of a violation by the Company has been established, the burden shifts to the Company to prove its affirmative defense of a specific exception to the core bargaining unit's Article 14 jurisdiction over the work in question.

CWA has offered these seven arbitration awards as established precedent for this shift in burden of proof: Contracting Out - Remote MTC Group (Jaffe, 2005); Contracting Out - Proactive Maintenance Application (Taylor, 2001); Contracting Out - Electronic Technicians (Clarke, 1999); Contracting Out - Underground Cable (Light, 1998); Haplen & Wilson (Ferguson, 1997); Contracting Out - Station Removal (Smith, 1971); and Contracting Out - Removal of Aerial Cable (Taylor, 1999).

I have read these awards. I accept them as applicable to the facts here, and as persuasive. Going further, I acknowledge that a *prima facie* case exists that Article 14.02 jurisdiction is established over the work in question. It follows that I find that in order to rebut the grievance, the Company must prove that the parties bargained an Article 14 exception that applies to the work involved in this case.

CWA's grievance contends that a Wire Technician violates Article 14.02 by performing a Land Line Transfer on the landline service of a landline customer to whom the Tech has not been dispatched, or assigned to work on that customer's service. The Company defends on the ground that this work involved Pair Changes, and as such, was expressly permitted under Scope of Work. CWA responds, "No," saying that the work in question does indeed involve Pair Changes, and is a

Land Line Transfer, but the procedure is not identical to a Pair Change, and does not serve the same purpose, making it fall outside the Pair Change exception. CWA argues that the critical distinction between a Pair Change and Line Station Transfer is that a Pair Change involves one customer; a Line Station Transfer involves moving the facilities of one customer in order to free up those facilities for a *different* customer: “Unhooking one customer and plugging in another customer.”

Still, from the Company’s perspective, there is no dispute that a Line Station Transfer involves a Pair Change and that there is no question that the parties agreed during the 2015 negotiations that Wire Technicians could perform Pair Changes regardless of the technology involved. Add to this a Union document in evidence that says there are several types of Line Station Transfers, all of which have in common that “they are basically pair changes that require moving an existing customer from one pair or port assignment to another pair or port assignment so that the vacated pair or port assignment can be used to provide service to a new customer.” From this and impressions and understandings of participants at the 2015 bargaining, the Company concludes that if Pair Changes are permitted, and a Line Station Transfer is a Pair Change, then a Line Station Transfer is a permitted procedure for a Wire Technician to perform. Of the referenced bargaining table notes offered, the most impressive was the Union representative’s reply of “No” to a question asking if the language proposed by the Union was intended to limit a Wire Technician from doing a Line Station Transfer.

The Union argues, and has demonstrated, a history of holding strong to the position that the 2015 bargaining extended the permitted procedures for Wire Technicians in only very specific ways—“the fiber drop wire, pair changes and port swaps.” It holds fast to the position that the parties did not agree in any way to change the limitation preventing the Company from assigning Wire

Technicians to perform work on an internet customer's landline POTS services unless the Wire Technician was already dispatched to the premises for work not identified. The Union is adamant that nothing changed in the 2015 bargaining regarding the Line Station Transfer involved in this case from what was agreed in the 2012 bargaining.

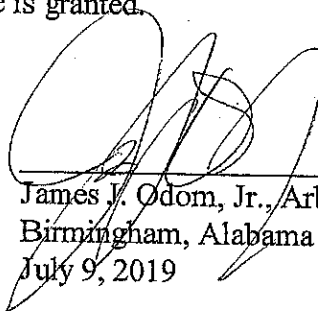
After numbers of reviews of the transcript of the testimony and the parties' powerful briefs, I find that the Company has not carried its burden to prove that its actions that are the basis for the Union's grievance qualify as an exception that would allow the questioned work to be performed by a Wire Technician.

Further, given the demonstrated preciseness with which the Union has approached releasing work to be performed by Wire Technicians, an agreement that would purposefully and intentionally allow the "Pair Changes" exception to be subject to multiple unidentified definitions, is highly unlikely.

Finally, I note that the proof offered by both sides left me doubtful that the negotiating parties ever confronted or contemplated the situations that underlay this grievance.

AWARD

For the reasons set out above, the grievance is granted.



James J. Odom, Jr., Arbitrator
Birmingham, Alabama
July 9, 2019