

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40097
Docket No. MW-40318
09-3-NRAB-00003-080101**

The Third Division consisted of the regular members and in addition Referee Sherwood Malamud when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
(IBT Rail Conference
PARTIES TO DISPUTE: (
(Union Pacific Railroad Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier failed and refused to properly cover, or reimburse, the charges and expenses Mr. L. Martellaro incurred in attending and participating in Carrier directed psychological counseling sessions for anger and stress management (System File D-06-25G/1461135).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant L. Martellaro shall now be reimbursed for a total of six hundred dollars (\$600.00) in connection with the charges and expense he incurred in complying with the aforesaid Carrier directed counseling sessions.”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Carrier assigned Claimant L. J. Martellaro as Foreman of Wyoming Division Extra Gang No. 5675. As a result of an incident on April 7, 2006, the Carrier removed the Claimant from service effective May 1 and ordered him to the Carrier's EAP. The Claimant received, and he incurred the costs of, treatment for anger and stress management from Dr. Burton E. Rosenblum.

The Claimant's insurance, the Rio Grande Hospital Association, declined to pay the physician's fees for eight sessions at a total cost of \$1250.00 for the reason that it does not pay for Carrier directed evaluations. The Claimant paid the bill out of his own funds. When the physician released the Claimant from treatment without restriction, the Carrier returned him to service effective June 13, 2006. The Claimant seeks reimbursement for \$600.00 under Rule 50 - Physical Disqualification, which reads, in relevant part, as follows:

“(a) **DISQUALIFICATION** - When and employee is withheld from duty because of his physical or mental condition, the employee or his duly accredited representative may, upon presentation of a dissenting opinion as to the employee's physical or mental condition by a competent physician, make written request upon his employing officer for a Medical Board.

* * *

(d) **EXPENSE OF PANEL** - The Company and the employee will each defray the expenses of their appointee, and will each pay one-half of the fee and expenses of the third neutral physician.”

The Organization argues that inasmuch as this involves a removal from service by the Carrier for a mental condition, the intent of the language should apply.

The Board concludes that when the Claimant was removed from service, a Medical Board was not established pursuant to Rule 50. In the absence of a Medical Board, Rule 50(d) i.e., the Rule's expense provision which provides for payment of the physician, does not apply to the circumstances of this case. Stated differently, there is no third neutral physician to compensate.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 19th day of November 2009.