

Neutral Citation Number: [2026] EAT 95

Case No: EA-2024-SCO-000020-JP

EMPLOYMENT APPEAL TRIBUNAL

52 Melville Street
Edinburgh, EH3 7HF

Date: 26 June 2026

Before:

THE HONOURABLE LADY HALDANE

Between:

MR STEPHEN LEIGHTON

Appellant

- and -

RENFREWSHIRE COUNCIL

Respondent

Mr Stephen Leighton the Appellant
Mr Laurence Greg Cunningham (instructed by Direct Access) for the **Respondent**

Hearing date: 30 April 2026

JUDGMENT

SUMMARY

Victimisation; protected act; detriment; causation

Did the ET err in its approach to the question of protected act and causation of the detriment claimed by the claimant and accepted to have occurred?

The claimant, an employee of the respondent, was asked by its housing department to assist in moving a disabled client into alternative accommodation while repairs were carried out to his home. This request was outwith the claimant's normal duties, but he requested and was granted permission to do so. His actions in assisting the client were asserted to be a protected act.

A subsequent complaint founding on aspects of the support provided and also alleging a breach of confidentiality was made. The claimant was moved to alternative duties pending resolution of the complaint to avoid him coming into contact with the client. It was asserted, and accepted, that this was a detriment.

The ET concluded that the act claimed was not a protected act, and that in any event the accepted detriment arose because of the complaint, which was separable from the protected act. Even had it held the protected act established, the claimant would not have succeeded on causation. The claim was dismissed.

On appeal by the claimant, held that the ET had fallen into error in its assessment of the protected act, specifically in its conclusion that not every interaction with the client could be asserted to be a protected act, when that was not the basis of the claimant's claim. However the assertion that the ET had fallen into error in relation to causation in applying a 'but for' test so far as causation was concerned was not made out. The ET had correctly addressed itself to causation and reached a permissible conclusion. Thus, as was agreed, since both grounds were inextricably linked, the appeal as a whole fell to be refused.

THE HONOURABLE LADY HALDANE:

Introduction

1. The appellant is Steven Leighton, and the respondent his former employer, Renfrewshire Council. For ease, I will refer to parties as the claimant and respondent, as they were below. The claimant initially presented a claim to the Employment Tribunal (ET) making complaints of disability discrimination and included a reference to whistleblowing. A case management preliminary hearing clarified that the basis of the claim was in fact one of victimisation in terms of s 27 of the **Equality Act 2010** (“**EqA**”). No other complaint was insisted upon.

2. A hearing took place on 17, 18, and 19 January 2024, (EJ Wiseman, sitting with members D McDougall and A Matheson). By its decision dated 1 February 2024 the ET unanimously dismissed the claim. The claimant appealed, setting out five grounds in his notice of appeal. The respondent cross appealed. Deputy Judge Bowers KC allowed grounds 1-3 to proceed to a full hearing. He determined that the cross appeal was unarguable. That decision was not the subject of challenge. As was his right, the claimant sought a hearing in terms of Rule 3(10) in respect of the rejection of grounds 4 and 5. That hearing was presided over by The Hon. Lord Colbeck who came to the same conclusion in respect of grounds 4 and 5 as had the first sift Judge. However, in setting out his reasons for so concluding in relation to ground 4, Lord Colbeck expressed himself in a way that gave rise to the impression, albeit inadvertently, that he might have prejudged the merits of ground 2. Lord Colbeck recognised that possible construction of his words and recused himself from further involvement in the case. I will return later to the question of the significance, if any, of that aspect of matters.

3. Thus, in the result, three grounds of appeal went forward for consideration at a full hearing. These were, in summary, that (1) the ET erred in its approach to the question of what constituted a protected act; (2) that the ET erred in its approach to causation so far as the only detriment it found established was concerned; and (3) that in consequence (this ground being more akin to a conclusion

invited if grounds 1 and 2 were upheld) the ET ought not to have found that a complaint made about the claimant, rather than the protected act, was the reason for the first detriment occurring. The respondent resists all three grounds of appeal.

Background

4. There was no challenge to the key findings in fact and so I draw upon those for the purpose of this summary of the relevant background. The claimant worked for the respondent as a team leader in its Autism Connections service. His duties included referrals from social work and mental health services, carrying out autism assessments to determine what services were required and delivering training to colleagues on the subject of autism.

5. During the Covid pandemic and lockdown in January 2021, the claimant was contacted by the Housing Department asking if he could assist in a case involving a tenant known as Mr A, who had autism and mobility issues. He was required to move out of his tenancy on a temporary basis to allow work to be carried out there but was unable to pack up and move himself. A request for support with this was made. The claimant was also contacted by Mr A's psychologist in support of that request and having received permission from his manager to respond to this request, the claimant undertook himself to provide the necessary support despite this being outwith the broad remit of his regular duties.

6. The claimant provided considerable support to Mr A to help him pack up, move into temporary accommodation and then move back into his own property. This support was the basis for the protected act claimed by the claimant.

7. On 6 August 2021 Mr A's psychologist submitted a complaint on behalf of Mr A regarding the support provided to him and also making allegations of breach of confidentiality. The claimant's line manager advised him of the complaint and that it would be investigated. In the meantime a decision was taken to move the claimant to alternative duties. It was considered that this was necessary to avoid the claimant and Mr A coming into contact. The move to alternative duties was

asserted, and accepted to be, a detriment.

8. After a protracted period of 7 months the investigation was completed and it was decided that no further action would be taken in respect of two of the issues raised but that the third, relating to the allegation of breach of confidentiality, would proceed to a disciplinary hearing. In the midst of this process the claimant had also raised his own grievance (the details of which are not germane to the matters under consideration), followed by a subsequent grievance once a heavily redacted copy of the original complaint was provided to him. After the second grievance had been made, and prior to it being determined, the claimant applied for a post with another local authority. He left the employment of the respondent prior to the disciplinary hearing taking place.

Relevant findings of the ET

9. By its decision, the ET held that the support provided to Mr A was not a protected act within the meaning of s 27(c) of the **EqA**. Its conclusions on that matter are found at paragraph 51 and are as follows:

“We did not consider, in respect of point (i) that providing support to Mr A amounted to a protected act. We say that because simply because Mr A was disabled does not mean each and every interaction with him is a protected act. Further, in respect of point (ii) the whole purpose of the request to provide support to Mr A was to enable him to move accommodation on a temporary basis to allow damp in his property to be addressed. The purpose of the request for support was (to use the claimant's language) to prevent Mr A being "discriminated" against.”

10. On the question of detriment, the ET held that the first detriment claimed, that is being moved to alternative duties, was established. It recognised that the question then was whether the detriment occurred because the claimant had carried out a protected act. Its conclusions on that matter are found at paragraphs 54 to 56 as follows:

“.....The essential question in determining the reason for the claimant's treatment is what consciously or subconsciously motivated the employer to subject the employee to the

detriment. We concluded it was clear the respondent moved the claimant to alternative duties because of the complaint which had been against him and in respect of which there was to be a fact finding investigation.”

55. The claimant argued that the complaint arose because of the support which he had provided to Mr A, and therefore the complaint was linked to the protected act. The tribunal accepted that on the face of it the complaint arose from the support provided to Mr A but it was very clear that it was the complaint, and not the protected act, which caused the respondent to move the claimant to alternative duties. If the claimant had provided the support and there had been no complaint, he would not have been moved. The only reason the claimant was moved was because of the complaint. The complaint can be separated from the support provided to Mr A.

56. The tribunal decided that what motivated the respondent to move the claimant to alternative duties was the fact the complaint was received and was to be investigated. The complaint was separate to the support provided to Mr A (the protected act). In the circumstances, the tribunal decided the detriment of being moved to alternative duties was not because he had done a protected act”

11. So far as the second, third and fourth detriments claimed were concerned, the ET did not find these established. It concluded its decision in the following way:

“64. The tribunal, in conclusion, decided the claimant did not do a protected act in terms of section 27(c) of the Equality Act; further, even if the claimant had done a protected act, the detriments alleged by the claimant did not happen because he had done the protected act. The tribunal decided to dismiss the claim for these reasons.”

The Applicable law

12. S 27 of the **EqA**, so far as relevant to this claim, provides:

“27 Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act

.....

(c) doing any other thing for the purposes of or in connection with this Act;”

Relevant Case law

13. As to the role of an appellate tribunal, I bear in mind the following: under section 21 of the **Employment Tribunals Act 1996** an appeal to the Employment Appeal Tribunal lies only on a question of law. Useful guidance as to the proper approach is found in the judgment of the Court of Appeal in **R (Iran) v SSHD** [2005] EWCA Civ 982 at [9], where examples of errors of law are given and include: i) making perverse or irrational findings on a matter or matters that were material to the outcome (“material matters”); ii) failing to give reasons or any adequate reasons for findings on material matters; iii) failing to take into account and/or resolve conflicts of fact or opinion on material matters; iv) giving weight to immaterial matters; and, v) making a material misdirection of law on any material matter.

14. I also bear in mind recent guidance from Eady J (then President of the EAT) in **Seyi Omooba v Michael Garrett Associates Ltd (T/A Global Artists) and another** [2024] EAT 30 where she summarised the proper approach thus:

“118. In considering the reasoning of the ET, I remind myself of the guidance provided by Popplewell LJ in **DPP Law Ltd v Greenberg** [2021] EWCA Civ 672, [2021] IRLR 1016 at paragraphs 57-58, as follows (I summarise): (1) the decision is to be read fairly and as a whole, without focusing merely on individual phrases or passages in isolation, and without being hypercritical (an ET is not sitting an examination; see per Singh LJ paragraph 42 **Sullivan v Bury Street Capital Ltd** [2021] EWCA Civ 1694, [2021] IRLR 159); (2) the ET is not required to identify all the evidence relied on in reaching its conclusions of fact, nor express every step of its reasoning in any greater degree of detail than that necessary to be Meek-compliant (**Meek v Birmingham City Council** [1987] EWCA Civ 7, [1987] IRLR 250); (3) it should not be inferred that a failure to refer to evidence means that it did not exist, or was not taken into account: what is out of sight in the language of the decision is

not to be presumed to be out of mind; (4) when an ET has correctly stated the legal principles, an appellate court should be slow to conclude that it has not applied those principles, and should generally only do so when it is clear from the language used that a different principle has been applied to the facts found – a presumption that ought to be all the stronger where the decision is that of an experienced, specialist tribunal, applying very familiar principles whose application forms a significant part of its day-to-day judicial workload”.

The claimant’s submissions

15. The claimant submitted a well-presented skeleton argument which he supplemented with clear, succinct submissions. In support of ground one, he argued that the ET had fallen into error in its approach to the question of whether or not the claimant had carried out a protected act. The correct approach was to determine whether the support provided by the claimant to Mr A was for the purposes of, or in connection with, the **EqA**. In holding firstly that not each and every interaction with Mr A amounted to a protected act, the ET had applied the wrong statutory test. Secondly and in any event the protected act had been carried out for the purposes of, or in connection with the **EqA** in having regard to the duty under s 149 of that Act upon the respondent to ‘take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it. In short, the **Public Sector Equality Duty** (“**PSED**”). The support provided by the claimant to Mr A allowed the respondent to fulfil its **PSED** and thus was carried out in connection with the Act.

16. Finally and in any event on this aspect of matters, despite purporting to have regard to the principle enunciated in **Aziz v Trinity Street Taxis Ltd** (1989) QB483 (CA) where the Court held (albeit under reference to the predecessor legislation to the **EqA**) that doing something ‘by reference to’ the Act is a wider concept than ‘under’ and should be read accordingly. The ET had failed to apply this approach when considering whether the claimant had performed a protected act.

17. Turning to the second ground of appeal, the claimant submitted that the ET had erred when separating the protected act from the complaint which followed it, and had applied the wrong legal

test to that question. Specifically, the claimant argues that the ET could be seen by the language of its decision, to have applied a ‘but for’ test, as specifically disapproved of in **Warburton v Chief Constable of Northamptonshire Police** [2022] EAT 43. The proper approach, the claimant contended, was to be found in **Warburton** and was to identify whether the protected act had a ‘significant influence’ on the outcome. Had the ET approached matters in this way, it ought to have concluded that the complaint and the protected act were closely linked and could not be separated as the ET had sought to do. This would have led to the conclusion that the protected act had a significant influence on the outcome or, put another way was ‘the reason why’ so far as the outcome (the accepted detriment) was concerned.

18. So far as ground 3 was concerned, the claimant accepted that this depended entirely on grounds 1 and 2, but should be upheld if grounds 1 and 2 were themselves upheld. So far as disposal was concerned, the claimant submitted that the matter should be remitted back to the ET. If that was the course that the EAT were minded to take, then the claimant submitted that consideration also ought to be given to remitting his original ground 4, relating to the third detriment claimed, back also. The rationale for that came from the acceptance by Lord Colbeck following his Rule 3(10) decision, that he might inadvertently be considered to have prejudged ground 2 in his consideration of ground 4. Success on any of the grounds argued in the course of this hearing, would suggest that Lord Colbeck’s decision was legally unsound, and in the interests of justice that matter ought also to be remitted back.

19. As a closing submission, the claimant invited the EAT to consider the ‘*ex ante*’ principle, which he explained as a submission that wider consideration ought to be given to the effect such decisions might have on employees who might be reluctant to perform acts that prevent discrimination if they consider that will not be able to successfully bring claims under s 27 **EqA**

The respondent’s submissions

20. Mr Cunningham, Advocate, on behalf of the respondent, invited me to refuse the appeal.

He adopted his skeleton argument. In amplifying those arguments, Mr Cunningham submitted, as by then was common ground, that for the claimant to succeed he required to succeed on both grounds 1 and 2 before ground 3 came into play. Further, the claimant could not succeed unless both grounds 1 and 2 found favour as each could not stand alone.

21. Looking firstly at the timeline of events, Mr Cunningham submitted that the nature of the complaint made, including allegations of breach of confidentiality, and the reasons given for moving the claimant to alternative duties – including a specific finding that this was so the claimant and Mr A would not come into contact, were significant in considering the ET’s approach to its consideration of the reason for the complaint being made.

22. So far as criticism of the approach to the question of whether or not the claimant had established a protected act was concerned, Mr Cunningham submitted that any argument based on s 149 of the **EqA** was impermissible. This had not featured before the ET and had emerged only at the point at which reconsideration was sought. No appeal had been brought against the reconsideration judgment and therefore any argument based on s 149 could not be taken into account now. Mr Cunningham’s attention was drawn to the terms of paragraph 51 of the Judgment where the ET noted that the stated purpose of the support being provided was to prevent Mr A being ‘discriminated’ against. Clearly, this was not a specific reference to s 149 but might it be reasonable to consider that the ET had the issue broadly in mind having regard to that reference? Mr Cunningham conceded that the reference to discrimination could only, in a broad sense, be seen as a reference to the **EqA** but maintained his primary submission in relation to any finding at appellate level predicated on the s 149 **PSED**. Overall, in relation to the first ground of appeal Mr Cunningham submitted that the ET had addressed its mind to the correct test, and having correctly applied that test, reached a permissible finding in fact. Whilst it might have assisted if the ET had set out in more detail what it had in mind when it referred to interactions with Mr A at paragraph 51 that did not vitiate its overall conclusion on the claimed protected act

23. Turning to the second ground of appeal, Mr Cunningham’s position was that the ET had

recognised that moving the claimant to alternative duties was a detriment, but the key question was whether the respondent took that decision because of a protected act. The issue of why the respondent decided to move the claimant was a question of fact against which there lay no right of appeal (**BT v Sheridan** 1990 IRLR 25 para 35). Mr Cunningham submitted that the ET had set out the correct test for determining the reason for the detriment at paragraph 54. The essential question, he said was to determine the true reason for the detriment, or, put another way, what was the reason, consciously or unconsciously? (**Chief Constable of West Yorkshire Police v Khan** [2001] ICR 1065 (HL) para 29) This was not the same thing as saying ‘but for’ the protected act he would not have been treated in the way that he was (**Khan** para 57). The test in cases such as this does not employ the strict language of causation. Rather the real reason, the core reason, the *causa causans*, the motive for the treatment complained of that must be identified (**Khan** para 77).

24. It was clear from the ET’s judgment that it had clearly set out the reasons for moving the claimant at paragraph 54, and had gone on at paragraph 55 to employ the phrase ‘the only reason’ thus underscoring that it had in mind the correct test. The claimant had focussed on the findings on the case of **Warburton** that the question of ‘significant influence’ was relevant in determining whether the protected act had a significant influence on the outcome. Mr Cunningham accepted that was a relevant approach but in the present case the ET had felt able, on the evidence before it, what was the only reason for the detriment, and in so doing had applied its mind to the correct legal test. It had permissibly concluded that the protected act and the complaint were severable. Such a conclusion was consistent with authorities such as **Page v The Lord Chancellor** [2021] EWCA Civ 254 at paragraph 31 where Underhill LJ stated:

“I should also note in this connection a related line of authority, usually regarded as beginning with the decision of the Employment Appeal Tribunal in *Martin v Devonshires Solicitors* [2011] ICR 352. This is to the effect that, where an employer takes action against an employee in response to a complaint of discrimination, they are not to be treated as acting "because of" that complaint if the true reason for the action is not the fact that the employee has complained but some other genuinely separable feature of the complaint (such

as the manner in which it is made).”

25. At paragraph 54 of **Page** Underhill LJ considered a specific ground of appeal based on an alleged misapplication of the ratio of the earlier case of **Martin v Devonshires Solicitors** [2011] ICR 352 when Underhill LJ had given the Judgment of the EAT. He quoted himself in that case in the following passage:

““The question in any claim of victimisation is what was the 'reason' that the respondent did the act complained of: if it was, wholly or in substantial part, that the claimant had done a protected act, he is liable for victimisation; and if not, not. *In our view there will in principle be cases where an employer has dismissed an employee (or subjected him to some other detriment) in response to the doing of a protected act (say, a complaint of discrimination) but where he can, as a matter of common sense and common justice, say that the reason for the dismissal was not the complaint as such but some feature of it which can properly be treated as separable.*” (Emphasis supplied.)

26. Applying those principles to the present case, Mr Cunningham suggested that even where a protected disclosure is made, the employer can lawfully discipline the employee for a manner in which a disclosure was made, that can be severable from the facts of the disclosure itself. That was relevant in the present case because the ET had permissibly separated the question of the complaint from the protected act itself. That conclusion is supported by various findings in fact such as the finding that there were in effect two complaints, one about the support and one alleging a breach of confidentiality, as well as the finding that the purpose of transferring the claimant was to avoid him coming into contact with Mr A – that was categorised by Mr Cunningham as in effect looking forward to future issues rather than the fact of the provision of services, as well as the proximity in time between the complaint and the transfer. It would not make sense, suggested Mr Cunningham, that having asked the claimant to assist Mr A that the respondent would then victimise him for carrying out that service. Drawing all of those factors together supported the permissible conclusion that the detriment was not linked to the protected act, but rather to the complaint made subsequently.

27. In summary, Mr Cunningham invited the EAT to refuse the appeal. If however the claimant

was successful on both grounds 1 and 2, then the matter should be remitted back. The invitation extended by the claimant in his skeleton that the EAT should make an award of £4000 would be a matter for the ET, rather than the EAT. On the issues raised anent the terms of the Rule 3(10) decision, Mr Cunningham submitted that Lord Colbeck had correctly recused himself from further involvement in this case, but his doing so did not vitiate his underlying reasoning in relation to the grounds of appeal under consideration, and that decision should stand.

Reply for the claimant

28. In a brief reply, the claimant reiterated the key points of his argument as summarised above. He emphasised that it was his request to his line manager to be permitted to assist Mr A that had given rise to the protected act, so any suggestion by or on behalf of the respondent that it was illogical that it would victimise him after requesting him to assist was erroneous. The request had come from the claimant, not the respondent. It was precisely that sequence of events that gave rise to the complaint of victimisation in the first place. The claimant reinforced his submission that the ET had applied the ‘but for’ test erroneously and had failed properly to engage with the approach set out in Warburton. Had it done so, the application of the ‘significant influence’ test would have led to a more common sense, robust decision.

Post hearing submissions

29. After the hearing concluded, the claimant contacted the EAT to ask if he might make further submissions in relation to the causation point. Having regard to the overriding principle, I concluded it was appropriate to permit the claimant to do so, subject the respondent having an opportunity to respond. A limit on the length of those additional submissions was set, and complied with by the claimant. The respondent, having considered the additional submissions, advised that it did not wish to add anything to the written and oral submissions relied upon at the hearing.

30. Having read and taken into account all that was said in those additional submissions, I

summarise them as seeking to reinforce the submissions made in relation to the alleged error of the ET in applying a ‘but for’ test of causation, rather than the appropriate test, which the claimant contends, under reference to **Warburton** is whether the protected characteristic or protected act ‘had a significant influence on the outcome’. Had the ET applied that test, he submits, it may have reached a different conclusion on the reason why and motivation for the alleged detriments, because the complaint was about the protected act.

Analysis and decision

31. The two questions for determination are whether, firstly the ET erred in its approach to the assessment of whether or not the claimant had made out a protected act, and secondly, whether the ET erred in its approach to causation in relation to the detriment it found established. It was common ground that these two grounds stand or fall together. Error in the approach to the protected act, absent a corresponding error in the approach to causation, would mean that the appeal must fail. The same is true if error on the question of causation is established, but not so far as the protected act is concerned.

32. The conclusions of the ET on the question of protected act are found at paragraph 51. There the ET states in terms ‘We did not consider...that providing support to Mr A amounted to a protected act. We say that because simply because Mr A was disabled does not mean each and every interaction with him is a protected act.’ The difficulty with that conclusion is that it does not reflect the case actually being advanced. The claimant was not suggesting that each and every interaction with Mr A amounted to a protected act. He founded specifically on the request to provide Mr A with assistance moving out of his accommodation and back again, something outwith the claimant’s normal duties and in respect of which he had to request permission from his line manager. The ET does not engage with that factual matrix, which it records at paragraphs 8,9 and 10.

33. Further, the claimant advanced the argument that this amounted to a protected act because the request for the support was to prevent Mr A being discriminated against (as it is recorded by the

ET in paragraph 51). True it is that there is no specific reference to s 149 in paragraph 51, but it is a reasonable inference to be drawn from the language employed that the ET understood the claimant's arguments as to why the provision of the particular support amounted to a protected act. However what is missing from the analysis of the ET in addition to engagement with what specific protected act it is that the claimant is founding upon, is any analysis of, or engagement with, the purpose for which the claimant contended he had engaged in the protected act. For all those reasons, there is a lacuna in the reasoning of the ET such that it cannot be said with confidence that it has engaged with the relevant test set out in s 27(c) of the **EqA**. The claimant has demonstrated in this regard that the ET fell into error.

34. The ET was also required to consider whether the one detriment it found established – that is moving the claimant to alternative duties – arose because of the alleged protected act. The claimant contends that the ET has applied a ‘but for’ test to this question. However, although it has not expressed itself under reference to any particular authority, it can be seen from the language employed by the ET that it has not, read fairly, done so. In fact, it has expressed its conclusion in the following way ‘The only reason that the claimant was moved was because of the complaint.’ That is language that is entirely consistent with the proper approach as enunciated in **Khan**. The underlying factual findings, most significantly the dual aspect to the complaint and the finding that the claimant was moved to other duties to avoid contact with Mr A, support that conclusion which is expressed in language that is redolent of the correct test being employed. The ET was permitted, in the face of the facts it found established, to regard the complaint as separable from the protected act (see **Page**) and come to the conclusion that it did. Although somewhat sparingly expressed, I can discern no error of law in the approach of the ET to the question of causation.

35. As both parties properly recognised, the central questions of protected act and detriment must be causally linked and therefore these two issues stand or fall together. The error in the analysis of the first question cannot give rise to a successful appeal absent a similar flaw in relation to the second. It follows that the appeal as a whole falls to be refused.

36. For the avoidance of doubt, although not germane to the disposal of the appeal, I consider that Mr Cunningham was correct in his submission that the decision by Lord Colbeck to recuse himself from any further involvement with this case after the Rule 3(10) hearing addresses the criticism made of his decision, which criticism in any event does not vitiate the decision overall. Therefore no further action requires to be taken in respect of that matter, which in any event would only crystallise in reality had both grounds 1 and 2 been upheld

37. Before turning to disposal, it is worth recording that the claimant is to be commended for the eloquence with which he presented his arguments. The lack of error in both key grounds of appeal means that overall the appeal must fail, but that takes nothing away from the competent and courteous manner in which the appeal was prepared and presented by the claimant before the EAT.

Disposal

38. For all of the foregoing reasons, the appeal is refused.