

SHERIFFDOM OF LOTHIAN AND BORDERS AT JEDBURGH

[2024] FAI 27

JED-B188-23

DETERMINATION

BY

SHERIFF PETER PATERSON

UNDER THE INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS ETC
(SCOTLAND) ACT 2016

into the death of

ROBERT McARTHUR

Jedburgh, 15 May 2024

The Sheriff having considered the information presented at an inquiry under section 26 of the Inquiries into Fatal Accidents and Sudden Deaths (Scotland) Act 2016 (“the 2016 Act”), determines:

[1] In terms of section 26(2)(a) of the 2016 Act, Mr McArthur was pronounced dead at 13:00 hours on 20 January 2021 at Dyebraes field, approximately 0.5 miles east of the Electricity Substation, Southwest of Whitchester House, Duns.

[2] In terms of section 26(2)(b) of the 2016 Act, the death occurred as a result of an accident at Dyebraes field, approximately 0.5 miles East of the Electricity Substation, Southwest of Whitchester House, Duns.

[3] In terms of section 26(2)(c) of the 2016 Act, the cause of death was:

(1a): Blunt force head injury;

(1b): Motor vehicle incident (mobile elevated working platform)

[4] In terms of section 26(2)(d) of the 2016 Act, the accident was caused by an elevating work platform (“MEWP”), then being driven by Mr McArthur on uneven and sloping terrain, sliding sideways until it toppled over, causing him to be thrown from his driving seat, whereby he sustained a fatal head injury.

[5] In terms of section 26(2)(e) of the 2016 Act, there are two precautions which could reasonably have been taken which might realistically have resulted in the death, and the accident that resulted in the death, being avoided, namely the wearing of the seat belt and adherence to the approved access route.

[6] In terms of section 26(2)(f) of the 2016 Act no defects have been identified in any working system which contributed to the death of the accident.

[7] In terms of section 26(2)(g) of the 2016 Act the court has been unable to identify any other factors that are relevant to the circumstances of the death.

NOTE

[1] The Inquiry heard evidence on 14 and 15 May 2024 into the sad and unfortunate death of Robert McArthur. At the enquiry the crown was represented by Catrine Fraser Procurator Fiscal Depute and Mr McArthur’s employers Keltbray Rail Limited were represented by Mr MacLeod KC. The deceased’s family were not represented at the Inquiry.

[2] The court is grateful to parties for the extensive joint minute entered into and for the detailed written submissions received after evidence.

[3] As a joint minute records at the material time, 20 January 2021, Mr McArthur was employed as a charge hand linesman and by Keltby Rail Limited. Mr McArthur had 13 years' experience working as a linesman and had been employed by the company since 2017.

[4] On 20 January 2021 the Deceased was moving a tracked MEWP from a field opposite Whitchester House, Duns, to a location on the new electricity line approximately 1.5km to the Southwest.

[5] All workers on site had been provided with approved access routes including the deceased.

[6] For reasons which are unknown the deceased departed from the approved access route turning right down a steep slope. The gradient varied between 22 and 23 degrees. It appears that he successfully negotiated the first part of the slope. However approximately halfway down the slope the MEWP lost traction after going over a raised area of sheep track. The loss of traction caused the MEWP to slide, still facing down the slope. It then appears to turn through 90 degrees and slide sideways down the slope which meant the caterpillar tracks were no longer providing traction but in affect acting almost like skis. In these circumstances there is almost total loss of control of the MEWP by the operator.

[7] The MEWP, then hit a raised tussock causing the MEWP to topple. Sadly Mr McArthur was not wearing a seat belt and as a consequence was thrown from the cab with the MEWP landing on top of him casing the fatal injuries.

[8] Mr Garry Miller of the Health and Safety Executive produced a very thorough and most helpful report which provides exact measurement and distances.

[9] The above description of the accident is intended to give a readily understandable explanation of the same.

[10] Mr Miller asked his colleague Peter Dodd to carry out an inspection of the MEWP. Mr Dodd has specialist knowledge in this field. He found no fault with the MEWP.

[11] The only area in which Miss Fraser and Mr McLeod were not at one on, relates to section 26(2)(g) of the 2016 Act. The crown asked the court to consider whether what was said to be a lack of progress with the work was a possible factor in Mr McArthur's choice of route.

[12] A number of factors required to be borne in mind in relation to this matter. Firstly, the evidence on the status of the work is not entirely clear. Certainly it was the evidence of Mr Harkin and Mr Jeffrey that there was no pressure. It was Iain Thomson's evidence that the contract was fixed price with no penalties for late completion. Mr Thomson's evidence does not make complete sense as the longer a job takes the more resource it absorbs. There is always a pressure in commercial contracts to get the work completed as quickly and as efficiently as possible. As Miss Fraser points out there was evidence from some of the witnesses such as Colin Nicol and Robert Drysdale about there being concern about being "behind".

[13] The second point that requires to be made is that it was estimated that the net saving of time that Mr McArthur would have made by taking the shortcut was

approximately 10 minutes. In the scheme of a contract of this nature due to last many days at least, it hardly seems likely that such a saving would be a factor in the choice of route.

[14] Another factor which has to be borne in mind is Mr McArthur's character. By common consent he was a conscientious employee. It appears by nature Mr McArthur was someone who wished always to 'get on' with things.

[15] Ultimately, the conclusion I have reached is that it can only be a matter of speculation why Mr McArthur deviated from the approved route. Accordingly, I have declined to make any finding in relation to section 26(2)(g).

[16] Finally, and like all the parties involved in this inquiry, I would like to pass on my condolences to the relative and friends of Mr McArthur.