

SHERIFFDOM OF LOTHIAN AND BORDERS AT JEDBURGH

[2021] FAI 50

JED-B84-20

DETERMINATION

BY

SHERIFF PETER PATERSON

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

into the death of

BRYAN THOMSON

Jedburgh, 17 August 2021

The Sheriff having considered the productions, the terms of the joint minute, oral and written evidence and submissions at the inquiry finds and determines in terms of section 26 of the Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016

("2016 Act"):-

[1] In terms of section 26(2)(d) of the 2016 Act, Mr Bryan Thomson was pronounced dead at 11:16 hours on 25 October 2019 at Northhouse Farm, Hawick in the Scottish Borders.

[2] In terms of section 26(2)(b) of the 2016 Act, Mr Bryan Thomson's death occurred as a result of an accident which occurred at Northhouse Farm, Hawick between 08:00 and 10:00 hours on 25 October 2019.

[3] In terms of section 26(2)(c) of the 2016 Act, the cause of Mr Bryan Thomson's death was traumatic (crush) asphyxia as a result of a farm machinery related incident.

[4] In terms of section 26(2)(d) of the 2016 Act, the accident was caused by the near side lower attachment between the mower and the tractor 3-point linkage becoming detached allowing the mower to fall outwards fatally crushing Mr Bryan Thomson.

[5] In terms of section 26(2)(e) of the 2016 Act, the precaution could have been taken to support the mower by axle supports or wooden blocks or the precaution of placing the mower in the transport position. The other precaution that could have been taken is that the cleaner of the mower not go underneath the same.

[6] The court makes no findings in terms of section 26(2)(f) of the 2016 Act.

NOTE

[1] This was an inquiry into the death of Bryan Thomson on 25 October 2019 at Northhouse Farm, Hawick in the Scottish Borders under section 2(3)(b) of the Inquires into Fatal Accidents and Sudden Death etc (Scotland) Act 2016.

[2] The inquiry took place on 10 August 2021. The crown were represented by Mrs Rollo Procurator Fiscal Depute, the family by Mr Robertson solicitor and the employer by Mr Jackson solicitor.

[3] The essential facts are not in dispute. Mr Thomson was employed as a tractor man/cattle man by J Hepburn & Co based at Northhouse Farm, Hawick.

[4] On 25 October 2019 it was agreed that the deceased would clean certain farm equipment prior to being put into storage for the winter. Specifically he was going to clean the Pottinger Novacast mower.

[5] Mr Thomson was familiar with the equipment, both in its operation and cleaning.

[6] The deceased was a model employee, conscientious and diligent, taking particular pride in the cleanliness of the equipment he was responsible for.

[7] To clean the mower the deceased required to move it to the location of the power washer. To do so the deceased required to attach the mower to a tractor. In this case a Massey Ferguson 7720, which was “his tractor” and accordingly he was very familiar with the same.

[8] To move the mower it was attached to the three point linkage on the tractor. The details of the mechanism of how the mower is attached and adjustments required are set out in detail in the report of Mr D C Gostick of HM Inspector of Health and Safety.

[9] The mower had three parts, the headstock, boom and the mower itself. The mower was attached to the tractor by the headstock and the three point linkage on the tractor. Two of the attachment points were at the lower level, a nearside and an offside attachment. The nearside attachment point could be adjusted by means of a hydraulic system the offside and upper attachment points were fixed. The mower was attached to the headstock by means of a boom. The mowing part protruded from the offside of the tractor. (See figure 9 of the report). The angle of the mower to the horizontal was varied for cutting, turning in the field or transporting. (See figure 10 and 11 of the report).

[10] The mechanism of attaching the lower two attachments involved a ball on the mower fitting into a hook with a socket for the ball with a spring loaded locking wedge. The attachment was achieved by lower arms of the three point linkage being lifted on to the hooks. This movement could be achieved from inside the tractor. Other movement required to be made from controls on the side of the tractor.

[11] At some stage in the cleaning process Mr Thomson lifted the mower to an angle of approximately 30 degrees in all probability to allow for a more thorough cleaning of the mower.

[12] The power washer had a lance which was estimated to be 2 metres in length.

[13] By raising the mower unit to the angle of 30 degrees an upward force was created on the near side linkage.

[14] If correctly connected the linkage would have been more than capable of sustaining the pressure generated by having the mower unit at an angle of 30 degrees. Mr Gostick estimated the upward force would be approximately 1.83 tonnes while the strength of the hook was in the region of 9.17 tonnes.

[15] When the tractor and mower were examined it was found that the nearside and offside attachment points were out of alignment by approximately 30mm. It was the opinion of Mr Gostick that this played no part in the accident.

[16] When the tractor and mower were examined after the accident it was found that the nearside attachment point had come loose and that this was almost certainly the cause of the mower falling on the deceased.

[17] The most probable cause of the nearside linkage coming out of the hook was that it had been incorrectly fitted, however there was no clear evidence to this effect and therefore to a degree there is an element of speculation in this proposition.

[18] Finally I would just like to reiterate the sentiments expressed by all parties about the tragic loss of such a fine young man.