

**SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT FORFAR**

**[2018] FAI 11**

B187/17

**DETERMINATION**

**BY**

**SHERIFF GREGOR MURRAY**

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

**into the death of**

**DAVID WILLIAM KEITH**

Forfar, 8 December 2017

**DETERMINATION**

The Sheriff, having considered the information presented at the Inquiry, determines:-

In terms of section 26(2)(a) of the Act that David William Keith, born 21 April 1985, late of Dundee, died on 4 February 2015 between 0625 hours and 0647 hours on the A90 road near Forfar, south of its junction with the unclassified road leading to Bogindollo.

In terms of section 26(2)(b) of said Act, that an accident resulting in Mr Keith's death occurred at the time and place narrated above.

In terms of section 26(2)(c) of said Act, that Mr Keith's death was caused by multiple injuries and blunt force trauma sustained in the accident narrated above.

In terms of section 26(2)(d) of said Act, that the cause of Mr Keith's accident was his failure to maintain control of a gritter lorry which he was driving.

Note:-

[1] The Inquiry in this case was held on 8 November 2017. The Crown was represented by Mr Barclay, Senior Procurator Fiscal. Mr Keith's employers, BEAR Scotland, were represented by Mr Lothian. No other party intimated an interest in appearing.

[2] A substantial Joint Minute was lodged in advance of the Inquiry. In addition, the Crown led evidence from the following witnesses:-

- a. Michael Allan, the driver of a lorry on the A90 on the date of Mr Keith's accident
- b. James Carr, the driver of a lorry on the A90 on the date of Mr Keith's accident
- c. Alex Stewart, a work colleague of Mr Keith
- d. Frank Clark, a work colleague of Mr Keith
- e. Gordon Stewart, a motorist on the A90 who witnessed Mr Keith's accident
- f. Stephen George, a passenger in Mr Stewart's car
- g. Police Constable Michael Douglas, the author of a Collision Investigation Report into Mr Keith's accident.

[3] BEAR Scotland led no evidence.

[4] All the witnesses clearly did their best in evidence to assist the court. The witness evidence was uncontroversial with the exception of when Mr Allan first saw Mr Keith's vehicle before the accident. Mr Allan said that occurred between Newtonhill and Stonehaven. However, as noted below, Mr Clark's evidence was that he was still then travelling in tandem with Mr Keith. If so, it would have been impossible for Mr Allan to

have overtaken Mr Keith then. On that issue, I prefer the evidence of Mr Clark – as was submitted to me, Mr Allan’s recollection was not as good as Mr Clark’s, perhaps unsurprisingly in view of the passage of time; separately, Mr Clark’s evidence, particularly in relation to timing, was corroborated by other witnesses.

[5] From the Joint Minute and the witness evidence, it is possible to produce a narrative of events on the morning of Mr Keith’s accident:-

- a. On 4 February 2015, Mr Keith was employed by BEAR Scotland as a gritter lorry driver.
- b. Around 0030 hours, he met Mr Stewart and Mr Clark at Cunmont Quarry, Monikie, before their shifts commenced. Mr Keith appeared entirely normal. All three drove off in gritter lorries about 0130 hours.
- c. Mr Keith was driving a DAF gritter lorry, registration GN06 TZS which was fitted with a device limiting its speed to 56 miles per hour. He patrolled the area north of Douglastown and Gateside to Laurencekirk.
- d. Around 0500 hours, Mr Clark encountered heavy snow as he patrolled the area north from Laurencekirk to Newtonhill, just south of Aberdeen. After he requested assistance, Mr Keith joined him. They then drove in tandem north on the A90 from Laurencekirk to Newtonhill, where they turned round and began clearing the A90 south. Just south of Stonehaven, Mr Clark’s lorry ran out of grit. He and Mr Keith agreed that Mr Clark would leave the A90, collect more grit in Edzell and meet up with Mr Keith on the A90 at a lay-by just north of Laurencekirk.

- e. Mr Keith continued south on the A90 alone, where he was overtaken by Mr Allan's lorry. When Mr Keith later overtook Mr Allan, Mr Keith's vehicle drifted between the two lanes of the southbound carriageway. He then lost sight of it.
- f. Mr Keith did not stop at the lay-by north of Laurencekirk to meet Mr Clark. Instead, he continued south on the A90 alone.
- g. On the Brechin bypass section of the A90, after Mr Keith overtook a lorry driven by Mr Carr, his gritter lorry again drifted over the two lanes of the A90 before it was lost to sight.
- h. Around 0625 hours, Mr Keith reached the junction of the unclassified road leading to Bogindollo with the A90 at the same time as a car being driven north by Mr Stewart, accompanied by Mr George.
- i. The nearside tyres of Mr Keith's lorry then left the A90 carriageway and dropped down slightly on to a soakaway covered by stone chips. Though Mr Keith drove back on to the carriageway, he overcorrected and swerved towards the crash barriers separating the A90 carriageways. As he did so, he was seen by Mr Stewart as he travelled in the opposite direction.
- j. Though Mr Keith managed to turn his lorry left before it hit the off side kerb, his vehicle then crossed over the near side of the carriageway and mounted a verge.

- k. Mr Keith's vehicle then overturned, causing the roof of his cab to collapse onto him. His vehicle came to a halt, still upside down, close to the nearside of the southbound carriageway.
- l. Mr Stewart stopped his car immediately and had Mr George call emergency services. Simultaneously, Mr Carr came on the accident scene as he travelled south, followed shortly afterwards by Mr Allan. After checking Mr Keith and finding him to have no pulse, Mr Carr also called emergency services.
- m. Paramedics and police arrived within five to ten minutes. Despite attempts to resuscitate him, Mr Keith was found to be dead.

[6] Dr Helen Brownlow subsequently carried out a post-mortem examination of Mr Keith's body and prepared Crown Production 4, a report containing her findings. She found no medical contributing cause to the accident occurring. Denise McKeown, a Forensic Toxicologist, prepared Crown Production 5, a Toxicology Report, from blood and vitreous humour from Mr Keith's body. Her analysis revealed no trace of alcohol or drugs in Mr Keith's body.

[7] The progress of Mr Keith's vehicle at the accident scene was recorded by Crown Productions 6 – 8, books of police photographs, and was also noted by PC Douglas and his colleague PC Miller, both highly experienced accident investigators who attended the scene. They subsequently prepared Crown Production 1, a Collision Investigation Report, and Crown Production 2, a scale plan of the accident scene, which explained their findings. Constable Douglas also spoke to examining the gritter's tachograph records, which showed it had been driving only for around 45 minutes. Prior to the

accident, its speed had been a constant 56 miles per hour, slightly in excess of the applicable limit of 50 miles per hour.

[8] Mr Keith's gritter was examined, both at the scene and later in Perth, by Alick Williams, a Vehicle Examiner appointed by the Secretary of State for Transport in terms of section 66A of the Road Traffic Act 1988. He later prepared Crown Production 3, a Vehicle Examination Report, which confirms he found no defects in the vehicle which might have contributed to the accident. He also obtained copies of Mr Keith's driving licence, which contains no restrictions or previous convictions suggestive of persistent lapses in Mr Keith's standard of driving. Mr Keith's gritter was also taken to a weighbridge after the accident and was found to be well within permitted limits.

[9] Investigation with BEAR Scotland disclosed that Mr Keith had no issues at work, was on time for shifts and was regarded as a reliable employee who was looking to progress his career. In common with other similar employees, he ordinarily worked a 4 days on, 4 days off shift pattern between 0100 and 1100 hours. The accident occurred on the third working day of his pattern after a three day break. In his evidence, Mr Clark confirmed he did not see any problem with Mr Keith's standard of driving while they were working in tandem.

[10] The police photographs, Post Mortem, Toxicology, Collision Investigation and Vehicle Examination Reports, the tachograph and weighbridge results and BEAR Scotland information were all agreed in the Joint Minute.

[11] As I hope is clear, the evidence cumulatively excludes many possible contributory causes of the accident. Mr Keith was fit to drive. He was driving a vehicle

which was familiar to him and which was in good condition. Though his speed immediately before the accident was excessive, it was not unduly so. He was under no pressure at work. He was working a familiar shift, one he had safely completed on each of the two preceding days, following three days' rest. The accident did not occur late on in his shift. For a significant part of it, he had driven alongside a colleague who saw nothing untoward with his standard of driving.

[12] In these circumstances, there is no basis for a determination under section 26(1)(e) or (f), or any recommendation under section 26(4).

[13] The remaining issue is whether the evidence from Mr Allan and Mr Carr of Mr Keith's vehicle drifting from lane to lane is sufficiently relevant to the circumstances of Mr Keith's death for the purposes of section 26(g). Though it could be, I have concluded it is not. Neither the witness nor forensic evidence disclosed drifting immediately before the accident. There was no evidence suggestive of drowsiness on the part of Mr Keith. He had no alcohol or drugs in his bloodstream. He did not drift at the accident scene in the manner seen by the witnesses. In these circumstances, the earlier drifting cannot be specifically linked to the tragic circumstances of Mr Keith's death. What occurred then was separate, as is clear from the Collision Investigation Report and the evidence of Mr Stewart. Unfortunately, the reasons why Mr Keith's nearside wheels came off the road surface will never be known.

[14] I record my condolences to Mr Keith's family as did Mr Lothian in submissions on behalf of his employers, a Director of whom was present during the hearing. It was

also said that Mr Keith was a popular, very dedicated employee who was missed by all those he worked with.

[15] Finally, I am grateful to Mr Barclay and Mr Lothian for the highly professional and co-operative manner in which they conducted both the Inquiry and the procedural hearing beforehand. Their approach enabled the hearing to be completed in a morning, at minimal inconvenience to participating witnesses.